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No. _____

In The

Supreme Court of the United States

DEE ELLEN GARRISON BARDES,

Petitioner,

vs.

SAMUEL POGUE TODD III,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeals
For The State Of Ohio,
First Appellate District Of Ohio,
Hamilton County

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II, PAGES 176 TO 442

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COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes SS# 270-52-9846 DOB:	:	Case No: DR 9402798 File No: E194749 CSEA
Plaintiff	:	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
-vs-	:	
Samuel Pogue Todd III SS# 293-56-1656 DOB: 01/04/54	:	**JUDGE CUNNINGHAM**
Defendant	:	(ENTERED DEC. 29, 1998)

The above captioned matter came before the Court pursuant to a pre-decree allocation of parental rights and responsibilities for the parties two minor children. The Court issued its parenting decision on May 23, 1997. Plaintiff/Mother (hereinafter referred to as Mother) requested the Court issue findings of fact and conclusions of law. The parties subsequently submitted their proposed findings and conclusions of law, the Court having granted Mother's request for extended time to do so. It was later agreed by the parties that the Court would consolidate the merits hearing, Mother's request for an allocation of college expenses, and any objections to the Magistrate's property decision into one hearing at which time the Court would issue its findings and conclusions of law. Mother, however, now denies that she agreed to this consolidation and argues that she requested the Court to issue its findings and conclusions of law prior to

the Magistrate's issuance of the property decision. The Court is taking this matter under advisement pursuant to Mother's request that the Court remand the issue of the allocation of private schooling expenses for the minor children to the Magistrate with a copy of the Court's findings of fact and conclusions of law for the Magistrate's consideration in determining said allocation.

The trial on the pre-decree allocation of parental rights and responsibilities was held on February 3, 1997. Mother was present and representing herself pro se. Father was present and represented by his attorney, Mr. William S. Abernethy, Jr. Based upon the evidence and testimony presented and the applicable law, the Court hereby issues the following findings of fact and conclusions of law:

FINDINGS OF FACT

The parties were married on May 26, 1988 at Cincinnati, Ohio. Two children were born issue of the marriage, namely: Samuel Pogue Todd IV, born February 19, 1990 and Garrison Bardes Todd, born September 26, 1991.

Mother is forty-two years of age, is in good health, and is currently not employed outside the home; she is a student at The University of Cincinnati. Mother resides with the minor children in the former marital residence located at 1035 Paxton Avenue in Cincinnati. Members of Mother's family also reside in the Cincinnati area.

Father is forty-four years of age, is in good health, and is employed on a full-time basis. Father resides at 670

Reisling Knoll in Cincinnati, a home owned by his parents to whom he pays rent. Father receives the benefit of someone cooking and cleaning while his parents are in the home with him which averages approximately seven months per year. It is Father's intention to move from his parent's home at the conclusion of this divorce action. Father's family has resided in the Cincinnati area for many years spanning five or six generations. The parties' families have also known each other and developed friendships over the years providing a stable, loving environment for the children.

Although Father was treated in the past (periodically between 1987 and 1993) for mental health problems (see Exhibit B attached hereto), Father's assertion that since the parties' separation he has not suffered with depression, experienced other mental health problems, and has not been taking medication for these conditions was not disputed by Mother. The parties did stipulate that on May 15, 1993 an "outburst" by Father resulted in some damage to the interior of the marital residence. Wife has no knowledge of any other outbursts by Father since the parties' separation. This evidence does not support a finding that Father's "outburst" involved domestic violence.

Following the parties separation on December 17, 1993, Mother filed a Complaint for Divorce on August 30, 1994 and was subsequently designated the residential parent and legal custodian of the minor children with Father having specific rights of visitation. Father was ordered to pay child support and has complied with all child support orders since that time.

On November 10, 1994, Father requested a full parenting investigation be commenced. The parents met with Ms. Ramona Wade, the Court's Parenting Specialist, who referred them to mediation. Although the parties represent that this mediation was court-ordered, the Court did not "order" the mediation sessions. Mediation was recommended by the Parenting Specialist. During 1995, the parents attended mediation sessions with Ms. Bea Larsen of the Center for Resolution of Disputes. However, mediation was unsuccessful and the parenting investigation was recommenced by Ms. Leslie Duncan, Parenting Specialist. Ms. Duncan issued her Pre-Decree Parenting Investigation report on June 4, 1996 setting forth a recommendation of shared parenting. (Said report is attached hereto as Exhibit C of the parents written Stipulations.)

The allocation of time with the children has not been an issue of conflict between the parents and neither parent is requesting a change in the allocation of time. The parents have communicated and cooperated since their separation on issues relating to the allocation of time with the children. Each parent has indicated during the pendency of the divorce action a willingness to incorporate the allocation of time within a Shared Parenting Plan. Mother filed her Motion for Shared Parenting and her proposed Plan on July 10, 1996. The parties, through counsel, (and subsequently Mother pro se) have attempted on several occasions to agree on the terms of a Shared Parenting Plan. In September, 1996 the Court was informed by counsel for the parties that the parties had reached agreement on the terms of a Shared Parenting Plan and the matter was set for submission of the Plan to

October 29, 1996. Thereafter, counsel for Mother withdrew by agreement and the matter was reset for submission of the Plan or custody pre-trial on December 10, 1996 and custody trial on February 3, 1997. On December 12, 1996, Mother filed her Amended Motion to Order Shared Parenting with an Amended Shared Plan and Addendum to Plaintiff's Amended Shared Parenting Plan. This was followed by Father's Motion to Order Shared Parenting on January 7, 1997 together with his Proposed Shared Parenting Plan.

On January 28, 1997, Mother withdrew her motions to order shared parenting and requested the Court to continue the status quo with Mother as sole residential parent and legal custodian of the minor children. The parties stipulated during the trial in this matter as to their respective allocation of time with children (see Exhibit A of the written stipulations attached hereto).

The sole question before the Court, as acknowledged by the parties, is whether it is in the best interest of the minor children for the Court to order shared parenting and what Plan is to be adopted or whether Mother should be designated the sole residential parent and legal custodian of the children with continued visitation rights to Father. All other issues were referred to the Magistrate for ultimate resolution.

Father requested an order of shared parenting while Mother argued that she should be designated the residential parent and legal custodian of the children as the parties are unable to cooperate and communicate sufficiently to effectuate a viable shared parenting plan. Closing arguments were submitted by Mother on March 31,

1997 and by Father on April 1, 1997. The Court rendered its decision in this matter by Entry of May 23, 1997.

At commencement of the trial in this mater, the parties submitted written Stipulations with Exhibits A,B, and C a copy of which is attached hereto and incorporated herein for all purposes. In addition to the written stipulations, the parties also stipulated on the record to the following:

1. The parties are unable to agree upon issues of child support, educational expenses (to include an allocation of pre-high school, high school and post high school expenses as well as Mother's request for reimbursement of expenses she has paid to date), health insurance/ medical expenses, life insurance, the children's activities and allocation of expenses for same, and allocation of the tax exemptions for the minor children.

2. Mother is to have the same access as Father to records of the family Trusts involving the children and Father will execute all documents necessary to effectuate Mother's access.

Following the trial in this matter, the parties entered into a number of agreements involving disposition of, inter alia, the issues of life insurance; tax exemptions; medical/health insurance; and Mother's access to the Samuel Pogue Todd (Sr.) Inter Vivos Trust, the Samuel Pogue Todd, Jr. Inter Vivos Trust, and the Samuel Pogue Todd III Trust. Mother also stated on the record that she is waiving her right to appeal the Court's decision regarding shared parenting of the minor children but she

is not waiving her right to appeal the Court's final decision on allocation of educational expenses for the children including college expenses.

The parents are able to communicate with each other and cooperate in a manner more than sufficient to implement the terms of the Shared Parenting Plan proposed by Father and filed with the Court on January 7, 1997 as modified by stipulation of the parties on February 3, 1997 and as further modified by this court's order of May 23, 1997. Notwithstanding the parents inability to agree on all of the child-related financial issues, they have continued to successfully engage in concerted efforts to maintain the children's sense of well-being and security throughout this protracted litigation. The parents have been flexible in making revisions to their parenting time when necessary for the convenience of the parents and the best interest of the children. They have been able to establish agreed upon vacation and holiday schedules with the children, transportation and religious training of the children have been addressed by agreement as well as selection of the children's health care providers. These parents have a strong and loving relationship with the children and are to be commended for not compromising the children's relationship with either parent.

The minor children of the parties currently attend Summit Country Day School and have been so enrolled since the children were ages three and two, respectively. Prior to attending Summit Country Day, the children attended two private pre-schools on a part-time basis. The parents stipulated that Summit is one of the finest educational institutions in Ohio. Further, that the children have adjusted well to the school environment and

have performed well in school both behaviorally and academically. This stipulation, however, is not to be used at any time as "evidence of Father's consent to contribute to the cost of the children's education at Summit or another private school." **Both parents acknowledge that the children are "gifted" intellectually and academically.**

Father does not dispute that it would benefit the minor children to attend Summit Country Day School and he has no disagreement with their continued enrollment in and attendance at Summit. However, since commencement of the within action, Father has continually voiced his opposition to an order requiring him to contribute to the cost of private schooling for the minor children as it is his position that he cannot afford the cost of such schooling.

Mother contends that as early as 1991 the parties agreed that the children should attend private school and that later Father "reneged" on the agreement. It is Mother's position that the withdrawal of Father's agreement was further evidence of the parties' inability to effectively cooperate sufficient to engage in shared parenting of the children. As evidence of an agreement on private schooling, Mother offered Plaintiff's Exhibit No. 3 and No. 4. The Court admitted these Exhibits and allowed the parties' testimony on this issue for the limited purpose of determining the parties ability or inability to communicate and cooperate.

The parents considered the question of private education for the minor children and **attended an open house at Summit Country Day School** prior to selection

of the school for the children's education and Samuel's enrollment. **Father had built a spreadsheet (see Plaintiff's Exhibit No. 3) to calculate the total cost of schooling for the minor children, projected over a fifteen-year period, at Summit Country Day School and Cincinnati Country Day School. It was determined by the parties that Summit was the better financial choice.**

Father did not disagree with the decision to enroll Samuel at Summit, however, he was concerned at that time about the cost of a private school education for the children. Father was then self-employed, earning a minimal income. Although the parties had no mortgage payment, both cars were unencumbered, and there were no short or long term debts aside from family loans to pay the children's schooling and loans between the parties, Father was concerned about the limited stream of income. Notwithstanding this concern, **Father was aware of Mother's enrollment of the children at Summit Country Day School and payment of schooling expenses** (see Plaintiff's Exhibit No. 4).

The parties have stipulated that Father has not contributed to the cost of the children's private school education since the parties' separation in December, 1993. The cost of the children's Summit education for 1996/1997 is approximately $15,000 per year which Mother testified will increase at the rate of seven to nine percent per year. Since the parties [sic] separation, Mother has expended approximately $36,000.00 for the children's private schooling. These funds have been paid from Mother's checking accounts, the custódial accounts which Mother

maintains for each of the children, and from the children's maternal grandmother, Priscilla Haffner (see Plaintiff's Exhibit No. 4).

The issue of private schooling for the minor children, allocation of expenses, and Mother's request for reimbursement from Father for payment of past schooling expenses is a matter which the parents acknowledged is referred to the Magistrate for disposition. However, as to the question of whether the evidence on this matter supports a finding that the parties are unable to cooperate and communicate sufficient [sic] to engage in shared parenting, the Court finds the evidence is insufficient.

In the past, both children have been seen by a speech therapist, Ms. Janet Marsh of the Speech Pathology Department of the Children's Hospital Medical Center (see Plaintiff's Exhibit No. 2). Ms. Marsh's report of March 22, 1995 states treatment for Samuel was discontinued on January 26, 1995; Samuel's speech problems are, in the opinion of Ms. Marsh, resolved. However, as of July, 1996, Garrison was still in need of on-going speech therapy which Ms. Marsh testified could require weekly sessions for a period between six months and a year. No expert testimony was presented as to Garrison's current (February, 1997) need for therapy. The current cost of a weekly one-hour speech therapy session at Children's Hospital Medical Center is $96.00 per hour.

Although Father was not fully supportive of or in complete agreement with Mother's position regarding the "need" for the children's speech therapy as he believed they were to young for the therapy, he now acknowledges that speech therapy was necessary for the children. The

only issue is one of allocating the costs for such therapy. Father submitted the bills given to him to his insurance provider which claims were subsequently denied. Father has not paid any portion of the uninsured medical speech therapy sessions over the past several years. Pursuant to the Court's temporary order of health care, the parties are to equally divide the cost of any uninsured medical expenses which would include the cost of speech therapy incurred for the benefit of the children subsequent to the effective date of the Court's temporary order. If Mother is seeking a different allocation of medical expenses, such request is properly before the Magistrate on a final determination of issues to be addressed during the property trial in this matter.

The evidence presented on the issue of speech therapy for the minor children does not support a finding that the parties cannot communicate or cooperate sufficiently to engage in shared parenting of the children. Further, the Court does not find that Father engaged in economic misconduct in his pursuit of a custody investigation, a parenting trial, and resolution of financial issues upon which the parties were unable to agree. Nor does the evidence presented support a finding that Father "unreasonably exacerbated and attenuated the Divorce Action in order to inflict financial and emotional duress and hardship on Mother and the children" as alleged by Mother in her proposed findings of fact.

(Plaintiff's Exhibits No.'s 1-4 are incorporated herein for all purposes.)

CONCLUSIONS OF LAW

In making a decision regarding the allocation of parental rights and responsibilities, the Court is mandated to follow the law as set for in Ohio Revised Code Sec. 3109.04. The Court must make its decision taking into account "that which would be in the best interest of the children". The factors which the Court must consider when determining the best interest of a child are set forth in Sec. 3109.04(F)(1). When determining whether shared parenting is in the best interest of the children the Court shall apply the law as set forth in Sec. 3109.04(F)(2) and the referenced sections set forth therein.

The Court has fully complied with its legal mandate and finds that shared parenting is in the best interest of the minor children. The Court approves Father's shared parenting plan as modified by stipulation of the parties and with the modifications set forth in the Court's order of May 23, 1997.

The parties are loving, caring parents who have communicated and cooperated with each other during a difficult period to provide their children with a sense of well-being and a secure home environment. The parties live in close proximity to each other and have continued to encourage love and respect between the children and the other parent. The children have adjusted very well to their community and school environment. Their extended families live in the Cincinnati area and are involved in the children's lives.

While the parents have agreed upon many matters affecting their children, **the major areas of disagreement**

involve financial matters. Primarily, the private schooling and education of the minor children including college expenses. It is undisputed that the children are "gifted" and would benefit from private schooling. However, the question of financing this pre-college education is at issue and is a matter the parties acknowledge is to be referred to the Magistrate for disposition. **Another and equally compelling question is whether the parents can be court-ordered, without their agreement, to contribute to the cost of a college education for the children.** This matter is to be heard by the Court.

While the parties are unable to agree on all matters of shared parenting, the Court does not find that their disagreements so poison the atmosphere as to prevent shared parenting of the children. The children's interests are best served by the continued involvement of both parents in their lives to the greatest extent and with as much communication and contact between the parents as is possible.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

[T.d. 233]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES SSN: 270-52-9846 DOB: 7/21/56	:	Case No. DR9402798 File No. E-194749-0-7 C.S.E.A. No. _____
Plaintiff	:	Judge Cunningham Magistrate Murphy
v.	:	
SAMUEL P. TODD, III SSN: 293-56-1656 DOB: 10/9/54	:	**STIPULATIONS**
Defendant	:	

The parties hereto enter into the following Stipulations for the purpose of the hearing to be held herein on the 3rd day of February, 1997.

1. The parties were married on the 26th day of May, 1988 and two (2) children have been born of the marriage, namely Samuel Pogue Todd IV, born February 19, 1990 (6) and Garrison Todd, born September 26, 1991 (5).

2. The parties have lived separate and apart since December, 1993.

3. The parties agree as to the allocation of parental time with the children. That allocation of time is set forth on the Schedule attached hereto as Exhibit "A".

(a) Each party stipulates that the other parent is a fit and proper parent and custodian of the children and that each is capable of caring for the children and meeting the needs of the children. This Stipulation shall not be

used at any time as evidence of Mother's consent that Father could be an appropriate sole custodian of the minor children.

(b) One issue for this Court to determine is whether the allocation of parental time with the children is to be accomplished within the framework of the Shared Parenting Plan as proposed by Father, or by Mother being designated as the residential parent and legal custodian with Father having parenting time or visitation pursuant to the allocation of time as stipulated.

(c) Another issue to be considered by this Court involves the ability of the parents to communicate and cooperate effectively within the framework of a Shared Parenting Plan in order that they might effectively carry out the purpose of a Shared Parenting Plan.

4. The parties stipulate that Exhibit "B" attached hereto is a summary of Father's mental/psychological history, involving diagnosis, treatment and prognosis of Father's situation. For purposes of the hearing of February 3, 1997, this history will be used for the purpose of attempting to determine the issue of custody and/or the ability of the parties to communicate and cooperate effectively within the context of a Shared Parenting Plan, pursuant to all applicable statutes.

5. The parties further stipulate:

(a) The children are currently enrolled in the Summit Country Day School with Samuel in grade one and Garrison in Kindergarten.

(b) The children have adjusted well to the school environment.

(c) The children have performed well in school both behaviorally and academically.

This Stipulation shall not be used at any time as evidence of Father's consent to contribute to the cost of the children's education at Summit or another private school.

6. The parties further stipulate that Exhibit "C" attached hereto is the report of Leslie Duncan dated June 4, 1996, including her recommendations. The parties do not stipulate to the accuracy of all facts as set forth in Exhibit "C". This Stipulation shall not be used at any time as evidence of Mother's consent to enter into a shared parenting arrangement with Father. This Stipulation shall not be used at anytime as evidence that Mother is in support of Ms. Duncan's recommendation for shared parenting.

/s/ D Bardes
D'Ellen, Plaintiff

Respectfully submitted,

STRAUSS & TROY

By: /s/ William S. Abernethy, Jr.
William S. Abernethy, Jr. 0002137
Attorney for Defendant
2100 PNC Center
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(513) 621-2120

[T.d. 233]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES	:	
a/k/a	:	CASE NO. DR9402798:
D'ELLEN BARDES TODD	:	File: E 194749-0-7
SS #: 270-52-9846	:	C.S.E.A.: _____
DOB: 07/21/56	:	
Plaintiff	:	Judge
	:	Penelope Cunningham
vs.	:	Magistrate
SAMUEL POGUE	:	William Murphy
TODD III	:	
SS #: 293-56-1656	:	**STIPULATIONS EXHIBIT**
DOB: 10/9/54	:	**A: SHARED TIME**
	:	**SCHEDULE**
Defendant	:	

1 The parties hereto enter into the following Stipulations for the purpose of the hearing to be held herein on the 3rd day of February, 1997:

1.1 This line has been intentionally left blank

1.2 Allocation of Time With Each Parent

1.2.1 Routine Schedule

1.2.1.1 Father shall share time with the parties' minor children as follows:

1.2.1.1.1 Every other weekend from 6:00 PM on Thursday to the following Monday morning when Father shall deliver them either to school and or to the location mutually agreed upon whether the Mother's home, athletic

club, child care or other geographically-reasonable destination between 8:00 AM and 8:15 A.M.

1.2.1.1.2 Every other Thursday from 6:00 PM until Friday at 6:00 PM. when Father shall deliver the children to the location ~~specified by Mother~~ [mutually agreed] [DB SPT] whether the Mother's home, athletic club, child-care or other geographically-reasonable destination; in the event that Mother plans to take the children out-of-town over the weekend, with agreement of Father Mother may pick up the children during/after school on Friday.

1.2.1.1.3 Mother shall drop the children off at Father's home, athletic club, child-care or other geographically-reasonable destination mutually agreed upon on such Thursday evenings, provided however that Father's home is located within seven miles of Mother's home; in the event that Father would relocate to a new residence which is seven miles or more away from Mother's residence, Mother shall optionally elect whether to drop off the children at Father's new residence or at a geographically reasonable and mutually agreeable destination; Father shall have such same options for return of children in the event that Mother relocate to a new residence, which Mother's new residence is not physically located within seven (7) miles of

Father's Residence. ~~such present residence's addresses as defined in paragraph 3.1.~~ [SPT DB]

1.2.1.1.4 All other time allocated below to Father for vacations and holidays.

1.2.1.2 Mother shall share time with the parties' minor children at all times not specifically allocated herein to Father.

1.2.1.3 Each party shall be responsible for delivering the children to the mutually agreed upon location to end his or her time with the children, unless specifically agreed to otherwise or otherwise provided herein. The parent who has the children at the time shall be responsible for providing transportation for the children to and from school and activities unless other arrangements have been made by the parties.

1.2.2 Vacations & Holidays

1.2.2.1 Vacations

1.2.2.1.1 Each parent is entitled to take the parties' minor children for a maximum of four weeks of vacation during each year, with no vacation to exceed two weeks at a time; vacations may be spent at any location including each parent's respective homes or elsewhere. A maximum of three of such four weeks may be exercised by either parent during the children's summer school vacation which generally occurs in the period, June through August. Each parent shall give the other a minimum of thirty days' written notice of his or her intent to exercise this right,

including the dates and places for the scheduled vacation(s), if known. The parties acknowledge that this notice is not required for (a) those weekends or weekdays either parent may choose to take the children away during his/her routine schedule set forth above and (b) during his/her holiday schedule/ extended periods as set forth below.

1.2.2.1.2 Each parent agrees that he/she shall be flexible regarding requests for changes in the routine schedule preceding and or following any vacation, in order to accommodate the non-vacationing parent's need (a) to ready the children for such vacation and or (b) to recover from the children's extended absence by spending extra time subsequent to such vacation with the children and or (c) for any other reasonable reason not specifically set forth herein. It is the parties intent in this paragraph that the non-vacationing parent shall not be unduly penalized.

1.2.2.1.3 Each parent has annually alternating first-choice on spending vacation time with the children during each major school break, including Spring break, Christmas Break, and Summer vacation break; as such if Father elected to take the children on vacation during Christmas break one year, Mother would have the first choice of spending Christmas vacation time with the children during the following year.

1.2.2.2 Holidays

1.2.2.2.1 Each party shall exercise his/her right to share time with the children on holidays, as follows:

1.2.2.2.1.1 Each parent shall have the children on the following holidays:

1.2.2.2.1.2 In even numbered years, Father shall have the children on New Year's Day, President's Day, Memorial Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas Day Late and Mother shall have the children on Martin Luther King Day, Easter, Fourth of July, and Christmas Day Early. In odd numbered years, Mother shall have the children on all holidays that Father had the children in even numbered years, and Father shall have the children on all holidays that Mother had the children in even-numbered years.

1.2.2.2.1.3 Unless the parties otherwise agree, they shall each be entitled to spend reasonable time with both children on each child's respective birthday. Each parent agrees to advise in advance the other parent of

dates, times, locations, and children-invitees to celebrations planned on or around the dates of the minor children's birthdays; this provision, however, does not imply that the other parent must be invited to attend such celebrations, only that he or she be timely advised in full of their nature.

1.2.2.2.1.4 In the event that the parties would elect to mutually host a birthday party, the parties agree to equitably share in the costs incurred; should either parent be invited and subsequently attend a celebration hosted by the other parent, this, in itself would not be construed as an agreement to share the costs incurred.

1.2.2.2.1.5 Father shall have the children on Father's Day from 10:00 a.m. to school or until 8 a.m. the next morning. Mother shall have the children on Mother's Day from 10:00 a.m. to school the next morning.

1.2.2.2.1.6 On or near the anniversary date of each parent's birth, each parent shall have the

option of whether or not to spend reasonable time with the children on or near each parent's respective birthday. The non-birthday parent shall accommodate the birthday parent's "personal holiday" preferences and schedule.

1.2.2.3 The following hours shall be in effect for all holidays if they fall on a day other than one that is normally that parent's day to be residential parent: The Holiday Period shall be from 10:00 a.m. to 8:00 p.m. for Martin Luther King Day and President's Day. The Thanksgiving Holiday Period shall be from Wednesday at 6:00 p.m. to Friday at 8:00 p.m. The Easter Holiday Period shall be from Saturday at noon until Sunday at 8:00 P.M. The New Years Holiday Period shall be from 12/31 at 6:00 p.m. to 1/1 at 8:00 p.m. The Fourth of July Holiday Period shall be from 10:00 a.m. on the Fourth of July to the next day at 8:00 a.m.; The Memorial Day Holiday Period shall be from Sunday at noon to Monday at 8:00 p.m.; the Labor Day Holiday Period shall be from Sunday at 6:00 p.m. until Monday at 8:00 p.m.

1.2.2.4 The Christmas Eve Holiday Period shall be from 12/23 at 6:00 p.m. to 12/24 at 9:00 p.m.; the Christmas Day Early Holiday Period shall be from 12/24 at 9:00 p.m. to 12/25 at 4:00 p.m.; the Christmas Day Late

Holiday Period shall be from 12/25 at 4:00 p.m. to 12/27 at 6:00 p.m.

2 Miscellaneous Shared Time Provisions

2.1 The provisions set forth above relating to the times in which each parent is to share time with the children shall not preclude the parties from the ability to alter said periods by mutual agreement. The parties shall make every reasonable effort to accommodate each other's schedule, and they will cooperate in the utmost good faith to minimize the difficulties necessarily involved in the upbringing of the minor children where the parties are living separate and apart from each other, and in carrying out their obligations under this Schedule, to the end that the relationship of the children with both parents shall be as harmonious as possible. The parties also recognize, that because this schedule potentially applies many years into the future, it may be necessary from time to time to adjust the time allocation set forth in this Schedule.

2.2 Both Father and Mother shall use best efforts to encourage the other parent's relationship with the children. In the event a change in schedule is necessary, the party who needs to change the schedule shall notify the other as soon as possible so as to minimize the conflict and/or problems associated with said schedule change. In the event of a conflict, the following is the order of preference: 1st: Holidays; 2nd: Vacations; 3rd: Weekends; 4th: Midweek Days.

2.3 Each party states that neither has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child, nor has he/she previously been determined, in a case in which a

child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication. Neither parent has ever been a party to a civil or criminal case or investigation concerning child abuse, child neglect or domestic violence regarding the parents' minor children.

2.4 When either parent will be gone overnight, regardless of the age of the children, the other parent shall be afforded the opportunity to exercise overnight parenting time. If either parent is more than ninety minutes late in returning/picking up the children without calling to make reasonable arrangements and or without just cause may be subject to contempt and or may forfeit that period of time with the children; exception shall be made if, and only if, the tardiness of the parent not sharing time with the children is for just cause and the parent who is sharing time with the children receives both prompt notification and a reasonable estimated modified arrival/departure time.

2.5 In the case of an unexpected extended illness, which would require either child to stay home from school, both parents agree to be flexible and available, if needed to stay home with a child or children or otherwise equitably accommodate such illness during its duration, even if the illness occurs during days when the children would usually be with the other parent, which care shall be administered in each parent's own residences or in a medical-facility, but not in the other parent's residence, except in the unusual event that an ill child should not be physically relocated.

2.6 Father and Mother agree to attempt to employ only non-smoking child care personnel to watch over the minor children. In the event that a child care provider does smoke, he or she must agree not to smoke whatsoever while a child is in his or her care.

2.7 Mother and Father shall continue to live separate and apart from the other, as they have been doing since December 17, 1993. Mother and Father shall each go his or her own way without direction, authority, control or molestation from the other, the same as though unmarried and each further agrees not to interfere with the other in any manner whatsoever. Mother may reside at such place or places, ~~subject to Section 3;~~ [DB SPT] as she may elect and may engage for her own separate use or benefit in any employment, business, avocation, relationship and or profession which she may deem advisable. Father may reside at such place or places, ~~subject to Section 3;~~ [DB SPT] as he may elect and may engage for his own separate use or benefit in any employment, business, avocation, relationship and or profession which he may deem advisable.

2.8 Each parent currently provides and shall continue to provide living accommodations such that their minor children shall have a bedroom separate from each parent in his/her respective residence during each child's minority.

2.9 If any child becomes seriously ill or injured or incurs a non-medical emergency during the time that such child is with either parent, that parent shall notify the other as soon as is practical and shall give to the other the details of such illness, injury, or emergency.

2.10 It is the intention of the parties to have free and ongoing access to the minor children by telephone at all reasonable times when each child is with the other parent. It is also the intention of the parties to allow the children to have free and ongoing access to the other parent by telephone at all reasonable times when each child is with the other parent. The parent then sharing time with the minor children should neither discourage nor interfere with any telephone contact initiated or desired by a child.

2.11 Each parent is responsible for providing transportation of the children as specifically set forth herein unless otherwise agreed to by the parents, except in the event that either parent elect or be obligated to temporarily or to permanently relocate to a community outside the Greater Cincinnati area.

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[T.d. 233]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES a/k/a D'ELLEN BARDES TODD SS #: 270-52-9846 DOB: 07/21/56 Plaintiff vs. SAMUEL POGUE TODD III SS #: 293-56-1656 DOB: 10/9/54 Defendant	CASE NO. DR9402798: File: E 194749-0-7 C.S.E.A.: Judge Penelope Cunningham Magistrate William Murphy **STIPULATIONS EXHIBIT B: SUMMARY OF FATHER'S MENTAL/ PSYCHOLOGICAL HISTORY**

The parties hereto enter into the following Stipulations for the purpose of the hearing to be held herein on the 3rd day of February, 1997: The following Summary of Father's Mental/Psychological History accurately represents the diagnoses, treatments administered, and known prognoses of Mr. Samuel P. Todd III's history with such psychiatric practioners:

1 **Dr. Charles Feuss, M.D., Psychiatrist**
(Mr. Todd saw Dr. Feuss infrequently during the years 1987, 1990, 1992, and 1993).

1.1 In 1987, Dr. Feuss initially saw Mr. Todd, Diagnosis: **Depression.**

1.2 In 1990, diagnosis: **Depression**; Treatment Prozac. Prognosis: Unknown, ~~due to fact that Mr. Todd failed to consistently administer his medication.~~

[SPT/DB]

1.3 In 1992, Diagnosis: **Panic Disorder of Fugue States; Psychogenic Fugue** (disorder where there is sudden, unexpected travel away from home or customary work locale with assumption of a new identify and inability to recall one's previous identity). Treatment: Xanax. Prognosis: Unknown, ~~due to fact that Mr. Todd failed to consistently administer his medication~~

[SPT/DB]

1.4 In 1993, Diagnosis: **Dissociative States with Reactions** (neurosis which helps Mr. Todd to handle stress); **Schizoid Personality** (disorder where there is a pervasive pattern of indifference to social relationships and a restricted range of emotional experiences). Treatment: Xanax. Prognosis: Unknown, ~~due to fact that Mr. Todd failed to consistently administer his medication~~

[SPT/DB]

2 Dr. Clayton Gotwals, M.D., Psychiatrist:
(*Mr. Todd saw Dr. Gotwals four times per week during 1991*).

2.1 From February 1, 1991 through August, 31, 1991, Samuel Pogue Todd III participated in at least **ninety-three (93)** separate sessions of Psychoanalysis therapy with Clayton K. Gotwals, M.D. at either the Cincinnati Center for Psychoanalysis, Inc., 3001 Highland Avenue, Cincinnati, OH 45219, 513/961-8846 or at Christ Hospital, Cincinnati, OH 45219. Diagnosis: Depression,

Psychogenic Fugue. Treatment: Xanax; Prognosis: Unknown.

2.2 On June 3, 1991, Dr.. Clayton Gotwals, M.D. admitted Mr. Todd to the psychiatric ward at Christ Hospital. Upon admission, Dr. Gotwals diagnosis was as follows:

2.2.1 Axis I. **Major depression;**

2.2.2 Axis II. **Personality disorder, not otherwise specified;**

2.2.3 Axis III. The patient is physically healthy.

2.2.4 Treatment: Desipramine; Pamelor.

2.2.5 Upon discharge from Christ Hospital on June 7, 1991, Dr. Gotwals made the following Discharge Diagnoses:

2.2.5.1 Depressive Reaction;

2.2.6. **Personality disorder, not otherwise specified.**

2.2.7 Upon discharge from Christ Hospital, the following Treatments were prescribed as follows: Pamelor; Continue four times weekly psychoanalysis with Dr. Gotwals.

[T.d. 233]

STIPULATIONS, EXHIBIT "C"

PRE-DECREE PARENTING INVESTIGATION

RE: Todd, Samuel III & D'Ellen
CHILDREN: Samuel, DOB: 02-19-90
Garrison, DOB: 09-26-91
A-9402798 E-194749
PARENTING SPECIALIST: Leslie Duncan, MSSW
DATE ASSIGNED: March 12, 1996
DATE COMPLETED: June 4, 1996

COURT STATUS:

Mr. and Mrs. Todd reluctantly agree on a shared parenting arrangement regarding the children. They are not in agreement as to how educational and medical expenses will be paid. A custody investigation was ordered.

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BACKGROUND:

Mr. and Mrs. Todd met in 1986 at a social function attended by family members. Mrs. Todd was self employed at the time doing publishing work and Mr. Todd was working for a large accounting firm. The couple dated two years prior to marrying in May 1988. Both Mr. and Mrs. Todd owned homes in the Hyde Park area. They moved into Mr. Todd's home and used Mrs. Todd's home for rental property. Prior to marrying, Mrs. Todd briefly saw a Charles Fuess, MD, psychiatrist, for problems surrounding her work.

Shortly after the marriage, Mr. Todd's job transferred to Ann Arbor, Michigan. The couple planned to start a family after the move. Mrs. Todd had Samuel in February 1990. The couple returned to Cincinnati so that Samuel could be born as an eight generation Cincinnatian. Mrs. Todd quit working after the move and she spent her time taking care of the family and maintaining their homes as rental property in Cincinnati. Mr. Todd had an expense account through his employment which Mrs. Todd managed. Four months after Samuel's birth, Mr. Todd was fired because of discrepancies in his expense accounts. Mr. Todd was asked to repay the amount he owed but Mrs. Todd felt the expenses were appropriate so he refused. This caused a great deal of anguish for the

couple in that Mrs. Todd felt Mr. Todd blamed her for his discharge.

The couple then returned to Cincinnati and they sold Mrs. Todd's property and she purchased Mr. Todd's home. She purchased the home with the equity she had in her other home and moneys she had received in inheritance. The home is owned by Mrs. Todd. Additionally the couple started a company know [sic] as Todd EDP Audit Company. Mr. Todd had never been self employed and Mrs. Todd had primarily worked for herself. The couple were not suited to working jointly in this type of occupation. The stress of being self employed was overwhelming to Mr. Todd. Mrs. Todd was much more suited to this type of occupation but she was primarily being a full time housewife. Further stress was caused by Mr. Todd commuting to his contractual employer in Pennsylvania on a weekly basis spending the majority of the time there. Mr. Todd indicated the stress became overwhelming for him. He was unable to cope with Mrs. Todd's critical attitude regarding him and he became uncomfortable at home. Essentially Mrs. Todd depended on Mr. Todd to help with the children so that she could complete her part of the work associated with the business. They would switch off tasks when Mr. Todd returned. Instead of returning home, Mr. Todd would disappear whenever the stress became too overwhelming. He would be gone for days at a time. During this time, Mrs. Todd became pregnant with Garrison and she gave birth in September 1991.

Mrs. Todd reported that during 1991 though the time they separated in 1993 she filled [sic] numerous missing persons reports with the police because Mr. Todd had disappeared. Mr. [sic] Todd initiated therapy for Mr. Todd with

her former psychiatrist, Dr. Feuss, as a means of helping with the problem. He saw him off an on through 1993. Mr. Todd also saw a Clayton Gotwall, MD, psychiatrist in 1991 essentially for the same reason. The couple [sic] problems were further complicated by Mrs. Todd trying to control Mr. Todd's behavior. When Mr. Todd would try to leave the home, Mrs. Todd would attempt to stop him. This caused physical altercations between them. Mr. Todd attempted to distance himself from Mrs. Todd by living separately in the basement. The couple maintained this living arrangement for a year prior to separating permanently in December 1993. Mr. Todd moved to his parent's home and Mrs. Todd remained in the marital home with the children.

Mrs. Todd filed for divorce in August 1994 and she was designated the residential parent. The temporary visitation arrangements are that the children would be with their father every week from 6 PM on Thursday until 6 PM on Friday. On alternate weekends they are with their father from 6 PM on Thursday until 8 AM on Monday before school. This arrangement has been satisfactory to both parents and they have not had any problems with the arrangement. After the separation, the couple dissolved their joint business venture and Mr. Todd went to work for his current employer. Mr. Todd indicated that he has not had any further need for psychiatric care because he is no longer living with Mrs. Todd.

CURRENT SITUATION:

Mr. Todd lives at 670 Reisling Knoll in the Mt. Lookout area. He is residing with his parents, Samuel Todd, Jr. and Emily Todd. His father is a retired doctor. Mr. Todd works

for Computer Horizons as a contract programmer. He works from 8:30 AM to 5:30 PM and made approximately $65,000 last year. Also, Mr. Todd is self employed as a computer consultant. His hours vary from one to sixteen per week and he makes $75.00 per hour.

Mrs. Todd lives at 1035 Paxton in the Hyde Park area. Residing with her are Samuel, age six and Garrison, age four. Mrs. Todd is not employed. She receives child support and alimony. Additionally she has income from stocks she owns in the amount of approximately $9,000 annually.

CHILD SUPPORT STATUS:

Mr. Todd is ordered to pay $1078.20 per month in child support. His child support payments are current. He is also ordered to pay $275.00 per month is [sic] alimony. There is an arrearage of $483.01 on this account. The arrearage is mostly due to non-payment of the poundage.

THE FOLLOWING FACTORS WERE CONSIDERED IN MAKING THE RECOMMENDATIONS:

1. **The wishes of the parents regarding the allocation of parental rights and responsibilities**

Both Mr. and Mrs. Todd are essentially in agreement with the current parenting schedule they are following. The arrangement has been adhered to for the past two years and the children are comfortable with the arrangement. The problem with finalizing the plan has to do with costs around medical expenses and educational expenses. Mrs.

Todd believes that Mr. Todd should provide for the children's private educational expenses. Mr. Todd indicated that he would have no problem doing so as long as he had the money to provide for this expense. Mr. Todd is paying his child support and spousal support. He indicated that there is not additional moneys available to provide tuition for both children to attend private schools. Samuel, age six and Garrison, age four, attend Summit County Day School. Samuel was in kindergarten this year and Garrison attended preschool. Mrs. Todd has paid the tuition with money she has received as an inheritance. Mrs. Todd believes that there are moneys available to provide the children with private education held in trust by Mr. Todd's family. Mr. Todd indicated that there is approximately a little more than thirty thousand dollars available and that this amount may in the future only cover part of their college education. Mr. Todd likes the school the children are attending. He is in disagreement as to how this expense will be paid.

Mrs. Todd questions whether shared parenting would work for them given the fact that Mr. Todd had emotional problems during the marriage that affected their ability to discuss problems. She believes that he will never be able to work cooperatively with her in making joint decisions. Mrs. Todd indicated that Mr. Todd agreed to sending the children to Summit County Day School when they were together but he has since reneged on his promise. Further she believes that they have had problems regarding differing opinions as to Garrison needing speech therapy. Mrs. Todd stated that Mr. Todd refused to pay for the therapy and that she is paying this expense. Mr. Todd indicated that the speech therapy was not paid for by his

insurance company because they said Garrison was too young for the service and that they would not pay for pre-speech problems. Mrs. Todd stated that if they could set specific requirements regarding the educational expenses and medical expenses in the shared parenting plan then she believes that they could have a shared parenting plan.

Mr. Todd believes that Mrs. Todd goes "overboard" on many issues regarding the children. He indicated that he never won an argument with her when they were married and that he tries to avoid conflicts with her. He believes that she is being unrealistic in her expectations regarding the children's educational expenses. Mr. Todd indicated that her insistence that Garrison have speech therapy shows that she tends to take issues to the extreme. He does believe that she has the children's best interest at heart and that she will always consider their needs. Mr. Todd would like to have the children more often but he indicated that his work schedule will not allow him the additional time. He believes that they could work out the issues regarding shared parenting if they can come to some agreement on educational and medical expenses.

2. The children's interaction and interrelationship with parents, siblings and others

During the marriage, Mrs. Todd has been the children's primary caretaker. She has taken care of the majority of their physical and emotional needs. She has taken them to their doctor's appointments and cared for them when they have been ill. She is primarily involved with their

school activities. Mrs. Todd is not employed and she exclusively invests her time in meeting their needs. The children are bonded to her. They are conformable [sic] around her and they depend on her to care for them.

Since the couple separated in December 1993, the children have been spending every Thursday night with their father and every alternate weekend with him. The children interacted affectionately with their father and they appear comfortable in his care. They are comfortable spending extended periods of time in their paternal grandparent's [sic] home. Both children reported a warm and affectionate relationship with their paternal grandparents.

Both children reported participating in enjoyable activities with their parents. Mr. Todd has a membership in the Cincinnati County [sic] Club where they participate in tennis, swimming and squash lessons. Neither child has a good concept of divorce but each child realizes that their parents will no longer be living together. Mr. and Mrs. Todd have not involved the children in their arguments regarding the divorce. They have tried to remain cordial for the children's benefit. Both Samuel and Garrison understand that their parents are arguing over whether or not they can attend Summit County Day School.

Samuel and Garrison have a normal sibling relationship. They are close in age and they are closely attached to one another. Both children are polite, well mannered children.

3. **The children's adjustment to home, school and the community**

Samuel, age six, completed kindergarten at Summit County Day School. His teacher, Ms. Pohl, provided a detailed description of his progress in school. She reported that "Samuel continually operates well one grade above his chronological age in all academic areas." She indicated no problems [sic] areas except articulation which was a weakness but she indicated that he has significantly improved in that area. She believes that his articulation needs to be monitored on a yearly basis. As to his peer relationship, Ms. Pohl reported that Samuel relates well to his peers and that he often assumes a position of leadership within his class. (See Attachment)

Garrison, age four, attended pre-school at Summit County Day School. He has been attending since he was three years old. Ms. Pohl is also his teacher. She reported that he is a bright child and that he is doing outstanding in all areas. As to his relationship with others, Ms. Pohl commented that Garrison is [sic] shy, quiet child but that he relates well to his peers and teachers. She indicated that he relies on his brother for emotional support when things bother him. Further she commented that he sometimes has problems with the transition from one household to the other. Ms. Pohl reported that Garrison has some articulation problems and that he is receiving speech pathology.

She is of the opinion that his problems will disappear with age and therapy. (See Attachment) In talking with Garrison, he is easily understood and he had no difficulty expressing himself.

Ms. Pohl reported that Mrs. Todd has been actively involved in the children's education. She provided a statement as to the number of activities she has been involved in with the school. One of her primary contributions was to design and conduct an in-class program for the children. She has also been a visiting computer instructor and she has helped the administration by providing research through the internet. Ms. Pohl reported that Mr. Todd attends the annual "Father's night". She reported that he has not attended any other conferences. **She reported that initially both Mr. and Mrs. Todd were committed to the school prior to enrolling Samuel in August 1993. (See Attachment)**

4. The mental and physical health of person involved

Mr. and Mrs. Todd do not have any obvious physical health problems or physical disabilities that would limit their ability to raise their children. Samuel and Garrison do not have any obvious physical health problems or physical disabilities that need special attention.

Mrs. Todd, age thirty nine, was born in Cincinnati. She is the middle child of four children. Her father supported the family with money he received from her grandfather and by working as a self employed publisher. Mrs. Todd's mother was a housewife. Her early childhood was less than ideal given the fact that her father was abusive to her mother and he drank and gambled excessively. Mrs. Todd indicated that she was always well care [sic] for because her parents came from wealthy families. They lived in very nice neighborhoods and they had the advantage of being raised in an upper class home. Mrs. Todd's

mother attempted to protect her from father's abusive behavior by hiding it from her. She reported that her father was physically abusive to her brother and that she witnessed his abusive behavior towards him. She indicated that her father was particularly rigid in his expectations of him as opposed to her sisters. Her parents divorced during her senior year of high school. Both remarried shortly afterwards. Mrs. Todd has a closer relationship with her mother who lives in Cincinnati than her father who lives in Florida. Mrs. Todd's mother has been helping her financially throughout the separation.

Mrs. Todd attended public schools in the Hyde Park area until her junior year of high school. Mrs. Todd's father was especially fond of Culvert [sic: Culver] Military Academy and during the middle of her junior year in high school she was transferred to that school where she graduated. All of her other siblings attended this same academy. Her oldest sister attended there when the school started to accept females. After she graduated, Mrs. Todd attended Colorado State University. She graduated with a Bachelor's Degree in Business Administration. After she completed her degree, Mrs. Todd moved to California where she worked as an assistant buyer. She was in this position for a year before being discharged for failure to meet job expectations. Mrs. Todd then went to work for another company as an [sic] marketing representative. She kept this position for two and a half years prior to being discharged for failure to meet sales expectations. During the time she was employed as a marketing representative, she attended night school and received her Master's Degree in Business Administration. Mrs. Todd worked several different jobs between 1982 to

1984 eventually realizing that she was not suited to traditional work environments. She indicated that she tends to be a perfectionist and she has difficulty with her interpersonal relationships with management. From that point on she has primarily pursued self employment. She has been able to do this because she has received money from inheritances. She has never made much money working on her own. Her ability to financially support the children is questionable because of her erratic work history and the little amount of money she has made working independently.

Mrs. Todd is compulsive. She has had problems with completing tasks because she becomes too overwhelmed with the details. In 1987. [sic] she went to see Charles Fuess, [sic] MD, psychiatrist, because she was having emotional problems around completing a work related project. Dr. Feuss reported that he diagnosed her at the time with Cyclothymia disorder which is a chronic mood disturbance. He tried her on a prescription of lithium for a period of time with little effect. He stated that her condition would cause her to have high and low energy levels. He did not believe that she needed to be on medication to control this condition. He did not believe that she had Bipolar disorder. He stated that he has not seen her in a long time. The distinction between Bipolar disorder and Cyclothymia are not well defined and it is sometimes believed that Cylcothymia is a mild form of Bipolar disorder. Both conditions have to do with disruptions in mood which affect social or occupational functioning. Dr. Feuss' impression was that Mr. and Mrs. Todd had very distinctly different personalities and that caused problems in their marriage. He indicated that Mrs.

Todd had very high energy levels and that she was out going [sic] and social whereas Mr. Todd was easily stress [sic] by social situations and that this caused conflicts between them.

Mrs. Todd's obsessive behavior appears to extend beyond the realm of the norm. Mrs. Todd is overly focused on the children's needs to the extent it could have a harmful effect on them. Older children need more flexibility and balance in their lives around educational and social issues. Mrs. Todd's inability to balance the children's needs as compared to meeting her own needs may become problematic if she is unable to be obsessive about them. Mrs. Todd should obtain counseling to help her establish a healthier balance between her life and the children's lives. Further she would benefit from counseling to address the divorce issues and help her move forward and make adequate judgments regarding her responsibilities concerning the children.

Mr. Todd, age forty one, was born in Cincinnati. He is the oldest child of three children. His father was a doctor and his mother was a housewife. Mr. Todd indicated that his father has been successful in his career and that he was able to provide well for his family. He indicated that his parents have been supportive of him. Mr. Todd denies any incidents of domestic violence or alcoholism in his family when he was growing up. His father is retired and he is living in his parents' home. His parents travel frequently and they have a summer home in Michigan. When Mr. Todd initially moved from the marital home to his parent's [sic] home, his parents were on an extended trip to Scotland. Therefore during a large part of the time the children have spent with their father, they have been

alone with him. Mr. Todd's sister lives in Cincinnati and she has helped with baby-sitting the children on Fridays when Mr. Todd is at work. Otherwise his parents and sister have been supportive of Mr. Todd but they haven't assumed the full time responsibility for caring for the children. Mr. Todd's mother indicated that when she is there he is still the primary caretaker.

Mr. Todd graduated from Western Hill [sic: Walnut Hills] High School. After graduation he planned on attending college. He attended Kenyan [sic: Kenyon] University and received his Bachelor's Degree in English. After graduation he worked for K-Mart as a manager trainee. He decided halfway through the program that he did not like working for K-Mart and he chose to return to school in the Fall. He was accepted at Case Western Reserve University and he completed his Master's Degree in Business Administration. After completing this degree, he got a job with a bank in the area and continued on with his education in completing a degree similar to a Doctoral in Information Systems. His parents were supportive financially through out [sic] his educational pursuit. After completing his educational pursuits he went to work for Federated Department Stores as an EDP Auditor. He worked for Federated until he was employed by Delottie [sic] and Touché [sic: Deloitte & Touche] as a computer consultant in EDP auditing. Mr. Todd was working for this company when he met and married Mrs. Todd. Mr. Todd was discharged by Delottie [sic] and Touché because of discrepancies in his expense accounts. After his discharge, it became difficult for him to find other employment. This is when he and Mrs. Todd started a business together. The stress of running his own business

was too overwhelming. **Mr. Todd started to avoid stressful situations by leaving the home and living out of his car. He escaped though [sic] reading science fictions [sic] books for days at a time neglecting his own needs and the needs of his family.**

Mr. Todd was seen by Dr. Feuss to address his emotional problems associated with the stress. Dr. Feuss reported that he initially saw Mr. Todd in 1987 and at that time he felt he was depressed. He again saw him in 1990 and he indicated he had the same symptoms of depression. He proscribed him Prozac for his depression with little effect. Dr. Feuss then saw Mr. Todd in 1992 when he stated Mr. Todd had completely different symptoms. Dr. Feuss reported that he presented with a panic disorder of fugue states. This is also known as a psychogenic fugue which is a disorder where there is sudden, unexpected travel away from home or customary work locale with assumption of a new identity and inability to recall one's previous identity. Mr. Todd was leaving home and being gone for long periods of time. He would then return looking disheveled. Dr. Fuess treated the symptoms with Zanax which is an anti-anxiety medication with significant success. He stated that Mr. Todd was seen again in 1993. His diagnosis of Mr. Todd was that he had Dissociative States with Reactions. He indicated that this is a type of neurosis which helped him handle stress. Dr. Fuess believed that Mr. Todd had a schizoid personality which is a disorder where there is a pervasive pattern of indifference to social relationships and a restricted range of emotional experiences. Dr. Fuess believed that Mr. Todd's personality was not compatible with Mrs. Todd's personality to cause extensive problems in the relationship. Dr.

Fuess further believed that if Mr. Todd continued to have fugue states he wouldn't be an appropriate caretaker for the children.

Mr. Todd was additionally seen by Clayton Gotwall, [sic: Gotwals] MD, psychiatrist, in June 1991. Dr. Gotwall provided his clinical notes which detailed Mr. and Mrs. Todd's relationship. He initially diagnosed Mr. Todd with major depression and a secondary diagnosis of personality disorder not otherwise specified. (See Attachment) Mr. Todd was seen by Dr. Gotwall after Mrs. Todd pleaded with his parents to seek treatment for him because he was suicidal. Mrs. Todd has indicated that she was never in treatment with Dr. Gotwall and she was not please [sic] with his care of Mr. Todd indicating that she felt he did nothing for him. Mrs. Todd was particularly upset that Dr. Gotwall hospitalized Mr. Todd without her knowledge. Dr. Gotwall related that Mr. Todd improved significantly with the hospitalization and treatment for depression. One of the significant problems mentioned by Dr. Gotwall was Mr. Todd's inability to assert himself with Mrs. Todd on any issue. He indicated that Mrs. Todd was critical, exceedingly controlling and directive in her behavior with Mr. Todd causing him to become increasingly depressed. Dr. Gotwall stated that Mr. Todd would become depressed because of Mrs. Todd's criticism and he would feel increasingly inadequate which would result in a downward spiral of depression that end [sic] up with him leaving the home. Dr. Gotwall hospitalized Mr. Todd without Mrs. Todd's knowledge because he believed that Mr. Todd needed a controlled environment in which to interact with Mrs. Todd. Focus of the therapy

with Mr. Todd included assertiveness training. Dr. Gotwell recommended that Mr. and Mrs. Todd participate in a Beech Acres parenting class to help them learn something about how to appropriately treat each other through learning how to appropriately care for their children. He hoped that this would teach them appropriate assertion and the avoidance of controlling intrusive behavior. Dr. Gotwall attempted to get Mrs. Todd to participate in marital counseling as a supportive therapy for Mr. Todd. He reported the difficulties he had working with Mrs. Todd and he mentions her having bipolar disorder. Dr. Gotwall indicated that he has not seen Mr. Todd since August 1991 and that he currently can not [sic] assess his capacity for child custody. (See Attachment) Mr. Todd contends that he has not had a single episode of fugue state since his separation and that his depression has gone away. Mr. Todd believes that his emotional problems were directly related to his stressful relationship with Mrs. Todd.

Mr. Todd still has a difficult time asserting himself with Mrs. Todd. He tends to avoid her instead of confronting her on issues. In order for him to affectively [sic] parent the children, he will have to learn to be [sic] challenge Mrs. Todd on significant issues regarding the children. His lack of assertion with Mrs. Todd maybe [sic] causing her to become even more excessive in her demands and obsessive in her behavior regarding the children. Mr. Todd should enter counseling to address why it is so difficult for him to confront Mrs. Todd regarding the children issues.

5. Physical environment

A home visit was conducted at Mr. Todd's residence in the Mt. Lookout area. Mr. Todd is residing in his parent's [sic] home. The home has three bedrooms and two and a half baths. The children have their own bedroom with twin beds and separate dressers. Mr. Todd has a separate bedroom in the same area. The home was adequately furnished. It had a large play area for the children. It was more than adequate in meeting the children's needs.

A home visit was conducted at Mrs. Todd's residence in the Hyde Park area. Mrs. Todd is residing in the marital home. The home has three bedrooms and two and half baths. The children have separate bedrooms. Mrs. Todd uses the third bedroom. The home was adequately furnished and it had a large play area for the children in the home and backyard. It was more than adequate in meeting the children's needs.

6. Caretaking arrangements

Mrs. Todd is not employed and she cares for the children when they are not in school. Mr. Todd has the children cared for by his mother or sister on Friday afternoons when he is working.

SUMMARY AND RECOMMENDATIONS:

Mr. and Mrs. Todd married in 1988. They have two children, Samuel, age six and Garrison, age four. The couple has been separated since December 1993. They are in the process of divorcing **but can not [sic] come to agreement**

on the payment of educational expenses and medical expenses. Mrs. Todd was named the temporary residential parent and Mr. Todd has visited with the children every Thursday evening overnight and every alternate weekend. The children have become adjusted to this schedule as Mr. and Mrs. Todd have followed it for the last two and a half years. The couple are in agreement with this parenting arrangement. **They are unable to agree as to who should pay for educational expenses and medical expenses.** Part of the problem has to do with Mrs. Todd's insistence that Mr. Todd is capable of paying these expenses. Mr. Todd denies that he has the financial where with all [sic] to pay these expenses in addition to the child support and spousal support he is providing. Both Mr. and Mrs. Todd have been told that it is not within my duties to make these determinations as to how property is divided. Further I have no information as to what moneys maybe [sic] available in trust to these children.

My impression is that Mrs. Todd is having difficulty finalizing the divorce because on some level she doesn't want the marriage to end. She is obsessing on issues regarding how the children's educational expenses will be paid because it continues to allow her control and interaction with Mr. Todd. The financial aspects of how the private school tuition will be paid is problem [sic] for Mrs. Todd. Mr. Todd is meeting his financial obligations.

Mr. Todd initiated the separation because he felt that the marriage was causing him severe emotional problems. He alleges his emotional problems have significantly improved since the separation. A major problem during the marriage was Mr. Todd's inability to confront Mrs.

Todd's critical and demanding behavior. He still had difficulty confronting her and he tends to avoid her instead of being upset by her behavior. His inability to confront Mrs. Todd is an ongoing problem and will continue to cause problems. Mr. Todd should enter counseling to help him be more assertive with Mrs. Todd.

I am recommending a shared parenting arrangement in which Mr. and Mrs. Todd continue to follow the schedule they have set up. The children are adjusted to this schedule and both parents have indicated that it is a [sic] workable for them. **Essentially Mr. and Mrs. Todd have been in agreement with most issues regarding the children except financial obligations.** I have attached a shared parenting plan as an example.

/s/ Leslie Duncan, MSSW
Leslie Duncan, MSSW
Parenting Specialist
June 4, 1996

PARENTING SPECIALIST

SOURCES OF CONTACT

Interviews:

February 16, 1995	Mr. and Mrs. Todd, Mediation Assessment and Referral
March 28, 1996	Mr. and Mrs. Todd
April 22, 1996	Mr. and Mrs. Todd
May 16, 1996	Mr. Todd
May 16, 1996	Mrs. Todd
May 17, 1996	Home Visit, Mr. Todd
May 20, 1996	Mr. and Mrs. Todd, Samuel and Garrison
May 22, 1996	Home Visit, Mrs. Todd

Phone Contacts:

February 13, 1995	Mrs. Todd
November 2, 1995	Mrs. Todd
March 14, 1996	Mr. Todd
April 10, 1996	Mrs. Todd
May 1, 1996	Charles Fuess, MD
May 10, 1996	Charles Fuess, MD

Reports:

November 8, 1995	Mediation Assessment From Bea Larsen, J.D.
April 10, 1996	Witness questionnaire, Emily Todd
April 11, 1996	Hamilton County Sheriff's Report
April 15, 1996	Witness Questionnaire, Elle Stefanie
April 22, 1996	Parent Questionnaire, Mr. Todd
April 22, 1996	Witness Questionnaire, LaVaughn Bardes
April 25, 1996	Witness Questionnaire, Karen Pohl
May 8, 1996	Statement and Clinical Notes From Clayton Gotwall, MD
May 16, 1996	School Questionnaire, Karen Pohl
May 16, 1996	School Questionnaire, Karen Pohl
May 16, 1996	Parent Questionnaire, Mrs. Todd
May 16, 1996	Additional Information Received From Mrs. Todd

T.d. 201

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes	:	Case No: DR9402798
SS# 270-52-9846	:	File No: E 194749
DOB:	:	CSEA AA# 89964/01
Plaintiff	:	**MAGISTRATE'S DECISION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**
-vs-	:	
Samuel Pogue Todd, III	:	Judge: Cunningham
SS# 293-56-1656	:	
DOB: 01/04/54	:	
Defendant	:	

(ENTERED AUG. 29, 1998)

A hearing for the determination of all [sic: App. 146, # 1; App. 153] issues except the merits in the above case was held on May 15, 1997, July 31, 1997, October 24, 1997 & December 18, 1997. Magistrate William L. Murphy, Domestic Relations Division of the Common Pleas Court, heard this matter in accordance with Rule 53 of the Ohio Rules of Civil Procedure. Present at the hearing were Wife who appeared pro se and Husband with Attorney William S. Abernethy, Jr. Based upon the evidence presented, the arguments and the law, the following is issued:

FINDINGS OF FACT

1. The parties were married on May 26, 1988, with two children born issue of their marriage: Samuel, born

February 19, 1990; and Garrison, born September 26, 1991. The parties separated in December 17, 1993 and Wife filed for divorce on August 31, 1994. A Temporary order regarding child support and spousal support was issued December 12, 1994. Prior to the temporary order, Husband was paying to Wife $900.00 per month in family support. The duration of the parties marriage will be determined to be from May 26, 1988 to December 17, 1993, pursuant to Defendant's exhibit #11, wherein Wife states the marriage had ended. The length of the parties marriage therefor [sic] is 5 years, 7 months.

2. The parties entered [sic: court ordered, App. 146, # 2, @ App. 254; App. 136] into a shared parenting plan, with the following issues unresolved and left to the Court: child support, educational expenses, health insurance/medical expenses, life insurance, [sic: deleted @ App. 146, # 3] cost of children's activities, post-high school expenses and allocation of the tax dependency exemption [sic: deleted @ App. 146, # 3] of the minor children. The issue of post-high school expenses is to be heard by Judge Cunningham.

3. The parties resolved all property issues by agreement, except for the issue of spousal support which is left to the Court to decide.

CHILD SUPPORT

4. Wife is currently unemployed. She has had [sic] not been employed other than through a self owned and operated business either on her own, or with Husband since 1984, except for one month with the IRS in 1991 and for a semester plus 2.5 weeks with U.C. in 1988. Her last full time employment by a outside employer was in

1983-1984, when she was employed by U.S. West, where she had annualized earnings of $30,000.00. Pursuant to her tax returns in 1994, 1995 & 1996, Wife had no earned income from wages, salaries, or tips. In 1997, Wife had no earned income from wages, salaries, or tips. In 1995, Wife had interest and dividend income of $10,737. In 1996, wife had interest and dividend income of $11,129.00. This interest and dividend income is obtained from Wife's separate stock, with a market value of $838,694.00, [sic: corrected at App. 139 to $710,706.00] as of October 24, 1997. This value is prior to any taxes or sales commissions that would have to be paid if these assets were liquidated.

For the years 1994 through 1996, Wife had not submitted any formal job applications. Wife's only pursuit of work was through trying to obtain contracts with employers and pursuing writing articles through contract employment. Wife is a skilled computer operator and her employment throughout her career has been primarily in the computer field. Currently, Wife is attending paralegal school. Both of the parties children are attending school on a full time basis. Wife has no health problems that would prevent her from obtaining and maintaining employment. For the purpose of determining the appropriate amount of child support in this matter, the Magistrate will impute to her income equal to a full time minimum wage job, which equals a gross annual income of $10,920.00, which will be combined with her interest and dividend income of $11,129.00, which will give Wife total income of $22,049.00. Wife presented no evidence that she has any day care expense.

5. Husband is currently employed by Ross Sinclair [sic: Sinclaire] & Associates. He is paid $50,000.00 gross per year for 1,000 hours of work. As of October 24, 1997, Husband anticipated generating an additional $20,000.00 in income per year as an independent contractor with Ross Sinclair and other contract work. On November 10, 1997, Husband signed an employment contract with his previous employer Computer Horizons working part time on a project they have with Proctor [sic] & Gamble. This project was supposed to run through April, 1998 and Husband anticipated earning between $50,000.00 and $60,000.00 from this employment. In past years, Husband has earned money form [sic] moonlighting in addition to his regular employment. In 1995 he had moonlighting income of $13,721.00. In 1996, he had moonlighting income of $21,443.00. The average of these two years is $17,582.00. By taking the possible $60,000.00 Husband anticipates earning from Computer Horizons in 1997 and 1998, the average moonlighting income Husband would have over the last four years would be $23,791.00. This amount of income will be added to Husband's base income and his interest and dividend income of $1,926.00 to arrive at his income for purposes of determining child support, which totals $75,717.00. Husband has no [sic: no earned, at App. 239, #a] income from any other source. Husband has daycare expenses of $575.00 per year and his cost for providing health care for the parties children is $1,301.00 per year.

Using these income figures, the amount of child support Husband would be required to pay would be $499.71 per month, per child.

HEALTH CARE INSURANCE/MEDICAL EXPENSES

6. Pursuant to the parties shared parenting plan, Husband will provide health insurance for the parties minor children. The parties could not agree on how unreimbursed medical expenses for the children should be paid. No particular evidence was submitted by either party, as to why the Court's standard order for the payment of unreimbursed medical expenses should not be used in this case. Wife would prefer that the unreimbursed medical expenses be divided with her paying 25% and Husband paying 75%. Wife would also prefer that any speech therapy costs for Garrison be treated differently than other medical expenses. The parties stipulated to the speech therapists' report and stipulated [sic] and Husband stipulated that he would assist in home therapy for Garrison.

COST OF CHILDREN'S ACTIVITIES

7. The parties could not agree on how to pay for the cost of the children's extracurricular activities. The parties did not present any particular evidence as to how they would like these expenses divided, other than the general financial evidence that was supplied.

EDUCATIONAL EXPENSES

8. The parties stipulated that their children are gifted [sic: highly gifted, T.p. 143, p. 4, ll. 12-17, amended @ T.p. 167, p. 5, ll. 4-9, reaffirmed @ T.p. 238, p. 40] children and as gifted children it would be better for them to attend a private school, such as Summit, as opposed to going to public school. It was further stipulated that the children are currently attending Summit

Country Day school and are doing well in school. Wife believes that the parties should share in the cost of sending the parties children to private school through college. The issue before the Magistrate is whether or not the parties should share in the cost of private education through high school and if so, how that cost should be divided. Husband is not adverse to sharing in the cost of private school for the parties children, but claims he cannot afford to do so at this time. Currently the cost of sending both children to Summit is $7,905.00 per child, per year, or $15,810.00 annually. Wife has continuously had the children enrolled in Summit and has utilized money from her mother to help in the tuition costs and other costs associated with sending the parties children to Summit. Wife intends to pay her mother back the tuition money her mother has paid. This total is approximately $54,431.50.

Wife believes that the parties entered into an agreement during their marriage to send their children to private school and that therefore that agreement should be enforced by order of this Court. Wife's basis for this argument is the spreadsheets the parties prepared in 1991 to project the cost of private school tuition for the minority of their then 1 year old son, i.e., Wife's exhibit I. At the time, the parties had a total income of $27,769.00. In fact in 1991 when this spreadsheet was created, Husband was unemployed and receiving unemployment benefits. In 1992, the parties had an income of $14,157.00 before deducting losses. In 1993, the parties had an income of $14,478.00 before deducting losses. The projected cost for the education of one child was between $80,370.00 and $104,272.45, through high school. Wife

testified that the parties anticipated liquidating assets to pay for the tuition, if their income did not rise to the level to meet these expenses. Husband denied any agreement to send the children to private school. The only marital money spent on the children's private schooling was money spent prior to August 15, 1993 [sic: oral stips. @ T.p. ___] to enroll Samuel [sic: both sons, @ T.p. 190, p. 118, ll. 9-24] in Summit Montessori. [sic: App. 182 evinces two private preschools prior to Summit with marital payment @ P.'s Exh. 1, 10/24/97, T.p. 186] Since that time, Husband has refused to contribute any money to the payment of tuition for the parties children to attend private school. In fact when Wife sent him a bill for tuition in August, 1994, Husband returned the bill with "not my bill", written on the bill. There was no evidence presented to show that the parties entered into any agreement to send the parties children to private school. The evidence only reflects that the parties desired to send their children to private school and would do so if they could afford the tuition.

Wife's second basis for requesting that Husband contribute to the private school tuition of their children is that based on the parties privileged upbringing, which included private schooling, **their children have a right to the same privilege**. There is no legal basis to this argument. There is no "right" to attend private school based upon a parents having attended a private school, or the fact that a parent was raised in an environment that included the financial ability to send the parent to a private school. **The only standard that will be applied by the Court is whether or not the parties have the financial resources available to send their children to**

private school. Wife has already indicated her willingness to send the parties children to private school currently, so Husband's finances will be examined to determine whether or not he has the current ability to contribute to the cost of private tuition.

Husband's gross annual income has already been established at $75,717.00. The parties stipulated [sic: mathmatical stip. only, App. 127-129, 132, 148, # 5] that based on Husband's net income after taxes on a gross income of $76,371.00 per Defendant's exhibit #26 and payment of child support, day care and premiums for health insurance for the children, Husband has disposable income of $179.00 per month. This equals net disposable income of $2,148.00 per year. Based on these numbers and with private school tuition costing over $15,000.00 per year, it is not appropriate at this time to order Husband to contribute to the cost of private school tuition. In addition, **with the finding that there is no agreement between the parties to send the children to private school, Husband will not be ordered to contribute to the tuition expenses already incurred by Wife sending the children to private school, as absent any agreement to do so,** Wife has made the decision to send the parties children to private school on her own [sic: App. 39, # 9.2; App. 182-184; App. 215, 219, 178; T.d. 23, p. 1, # 1] and she will be solely responsible for the cost.

In addition, there are funds on deposit in custodial accounts for each of the parties children, that the parties stipulated could be used for **the parties education expenses.** As of December 14, 1997, each of the children's' accounts had balances of over $17,400.00. Wife's

mother funds these custodial accounts with approximately $4,000.00 per year per child. Wife spends about $6,000.00 of the $8,000.00 per year.

TAX DEPENDENCY EXEMPTIONS [sic: section stricken @ App. 146, # 4]

9. No evidence was presented on this issue, as to the benefit of the exemptions for either party. The Magistrate will divide the exemptions between the parties.

SPOUSAL SUPPORT

10. In order to determine whether or not spousal support should be ordered in this matter and if so, for how long and in what amount, the Magistrate will apply the relevant factors contained in O.R.C. 3105.18:

a. *The income of the parties, from all sources, including, but not limited to income derived from property divided, disbursed, or distributed under Sec. 3105.171:* As previously stated in this decision, Wife is currently unemployed, but she will have imputed to her minimum wage income for a full time job, which is $10,920.00 gross per year. In addition, Wife has interest and dividend income of $11,129.00 per year, from her separate assets, which had a market value of over $800,000.00 as of the property hearing. Husband has earned income of $73,791.00 gross per year and interest and dividend income of $1,926.00 per year, for a total gross annual income of $75,717.00. He has no other source of income;

b. *The relative earning abilities of the parties:* In her last full time outside employment, Wife earned an annualized income of $30,000.00. During her time in running her own business and businesses with Husband, she

never showed the ability to earn that much income. Wife is currently obtaining a paralegal degree and anticipates obtaining employment upon completion of this degree, paying approximately $20,000.00 per year. Husband currently earns $73,791.00 gross per year. Based upon this evidence, it is clear that Husband has a greater earning ability currently, than Wife;

c. *The ages and the physical, mental, and emotional conditions of the parties:* Wife was born July 21, 1956 and is 42 years old. Pursuant to the evidence, Wife is in good health and suffers from no disabilities. Husband was born October 9, 1954 and will soon be 44 years old. Pursuant to the evidence, Husband is in good health and suffers from no disabilities.

d. *The retirement benefits of the parties:* The parties divided their [sic: husband's, @ App. 146, # 5] retirement benefits between them. No evidence was presented as to the amount of these benefits.

e. *The duration of the parties marriage:* It has already been established that the parties were married for 5 years, 7 months.

f. *The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home:* This factor is not relevant, as both of the parties children are attending school on a full time basis. Wife would have the ability to obtain and work at a full time job outside the home.

g. *The standard of living the parties established during the marriage:* The parties had a very nice standard of living during their marriage, but that was due mainly

to gifts that Wife's mother and grandmother made to the parties. The parties themselves never earned enough money during their marriage to sustain the lifestyle they lived.

h. *The relative extent of education of the parties:* Both parties have received very good education's [sic]. Wife has a Bachelor of Science in Business Administration from Colorado State University and a Master of Business Administration from Golden Gate University. Husband has a Bachelor of Arts degree from Kenyon College, a Master of Business Administration from Case Western Reserve and a Certificate in Advanced Proficiency Management in Information and Decision Systems. This certificate is like completing a doctorate degree without doing a thesis.

i. *The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties:* Wife has current assets totaling over $800,000.00, including her separate stock, equity in her residence and a payment of $4,987.77 due her by Husband. Wife's actual current liabilities total approximately $55,000.00. Wife included many future possible expenses in her summary of liabilities, such as law school tuition, repairs to her residence, etc., but those are only possible not actual expenses, as Wife has not been accepted into law school and the repairs to the residence were for it to be ready for sale, but Wife has no intention of selling the property at this time. Husband has total assets of $80,176.00 and total liabilities of $45,743.00. Husband at some future date will be the beneficiary of some trusts that may bring him substantial assets, but currently he has no interest in those trusts.

j. *The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party:* The parties completed their formal education prior to the parties marriage. During their marriage, Wife helped Husband to improve his computer skills, which has enabled him to increase his ability to earn income.

k. *The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is in fact sought:* Since the parties separation on December 17, 1993, Wife has done very little to pursue either training or employment. In 1997, Wife enrolled in paralegal school. She expects to complete the school in late 1998, or in 1999. As of the hearing on July 31, 1997, Wife had 1½ years of schooling left. Her cost for schooling is $177.00 per month. Wife also included evidence of her cost to attend law school, but as of the end of the property trial Wife had not been accepted into law school, so there is no guarantee that Wife would incur this cost. Even if she did attend, it is not mandatory training for her to obtain employment. Wife is a skilled computer operator and if she chose to attend law school, it would be a strictly voluntary expense.

l. *The tax consequences, for each party, of an award of spousal support:* The Magistrate takes judicial notice that any award of periodic spousal support to Wife from Husband, would be taxable income to Wife and a tax

deductible to Husband. Neither party provided any specific evidence on the tax ramifications such an award would have on the parties.

m. *The lost income production capacity of either party that resulted from that party's marital responsibilities:* No evidence was presented to show that either party had a decrease in their income production capacity due to their marital responsibilities.

n. *Any other factor that the court expressly finds to be relevant and equitable:* In deciding whether or not spousal support should be paid in this matter, the Magistrate considered the living expenses of each part [sic] as shown by their testimony and exhibits. In addition, the Magistrate considered the fact that the parties marriage terminated in December, 1993 and Husband has been paying support to Wife since that date including court ordered temporary spousal support since December 12, 1994, a period of 3 years 8 months as of the writing of this decision.

COURT COSTS

11. The parties stipulated to the payment of court costs. [sic: through May 5, 1997, @ App. 146, # 6].

EXHIBITS

12. Wife's exhibits A through S and U and 1 through 13 and 15 through 19, were admitted and are incorporated herein. Wife's exhibits T and 14 were not admitted. Husband's exhibits 1 through 7, 11 through 25, 27 through 32 were admitted and are incorporated herein.

Husband's exhibit 26 was admitted over Wife's objections and is incorporated herein. Husband's exhibits 8, 9, & 10 were withdrawn.

CONCLUSIONS OF LAW

The law to be applied regarding spousal support is contained in O.R.C. § 3105.18. In considering the property division issues, O.R.C. § 3105.171 is pertinent. The starting point for division of property is an equal division. *Cherry v. Cherry,* (1981), 66 O.S. 2d, 348 421 N.E. 2d 1293.

O.R.C. § 3109.05, § 3113.21, § 3113.215 and § 3113.217 et. seq. are relevant in setting child support. In determining the allocation of parental rights and responsibilities and visitation, O.R.C. § 3109.03, O.R.C. § 3109.04, O.R.C. § 3109.041, § 3109.051 and § 3109.22 are taken into account.

DECISION

1. Father shall pay support in the amount of $499.71 per month per child plus a 2% processing charge, payable through The Division Of Child Support Of The Department Of Human Services Agency for the parties' children. This order is effective September 1, 1998 and is payable monthly in the total amount of $1,19.41 [sic], including the processing charge. Notwithstanding section 3109.01 of the Revised Code, the parental duty of support to children, including the duty of a parent to pay support pursuant to a child support order, shall continue beyond the age of majority as long as the child continuously

attends on a full-time basis any recognized and accredited high school **or a court-issued child support order provides that the duty of support continues beyond the age of majority**. Except in cases in which a child support order requires the duty of support to continue for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. That duty of support shall continue during seasonal vacations. Father is responsible for making payments directly to The Division Of Child Support Of The Department Of Human Services Agency until such time as a deduction order takes effect. Any payment made directly to the residential parent and not through the Hamilton County Support Enforcement Agency shall be deemed a gift and not credited to the support account.

2. Father shall maintain health insurance for the parties' children. **A Qualified Medical Child Support Order shall issue. This order shall remain in effect for each minor child until that child reaches the age of eighteen (18) and no longer attends an accredited high school on a full-time basis unless otherwise ordered.** The residential parent and legal custodian [sic: Mother, @ App. 147, # 7] shall pay the first $100.00 per calendar year per child for all uninsured medical, dental, hospital, prescriptions, optical, psychological, psychiatric and orthodontic expenses. The remaining costs of these uninsured costs shall be shared equally between the parties.

3. [sic: # 3 stricken, @ App. 147, # 8] The nonresidential parent shall be entitled to use the parties' oldest child as a tax exemption so long as the nonresidential parent is substantially current in child support payments for the year in which there is a desire to use the child for

tax exemption purposes. The residential parent and legal custodian shall be entitled to use the parties' children for tax exemption purposes in all other instances. The residential parent shall sign any documents necessary to effect this order. This paragraph is only effective while the parents have a legal obligation to support the child to whom it refers. The awarding to the nonresidential parent of some tax benefit furthers the interests of the parties' children by encouraging the nonresidential parent to be totally current in support payments and so that the nonresidential parent will, from time to time, have extra discretionary funds to spend on the parties' children.

4. Until further order of the Court, Husband shall not be required to contribute to the cost of private elementary, or secondary education of the parties children.

5. The cost of the parties children's' extracurricular activities shall be divided equally between the parties for those activities in which the parties agree, that the children should participate. If the parties disagree on the children participating in an activity, either parent may enroll the children in that activity, but the parent enrolling the children in the activity shall be responsible for 100% of the cost of that activity.

6. Neither party shall pay spousal support/alimony to the other. The temporary order of spousal support shall be terminated effective September 1, 1998. Any arrearage due on the temporary spousal support order shall be preserved in the parties decree of divorce.

7. The parties agreed entries and stipulations regarding property are incorporated herein for all purposes.

Copies of this Decision have been mailed to the parties or their counsel. Objections to this Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision.

/s/ William L. Murphy
Magistrate
William L. Murphy 08/19/98

Copies sent by Clerk of Courts to:
D'Ellen Bardes, Pro Se Plt
1035 Paxton Avenue
Cincinnati, Ohio 45208
William S. Abernethy, Jr., Esq. DEF.

ENTRY ADOPTING MAGISTRATE'S DECISION

Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's decision. The filing of timely written objections to the Decision shall operate as an automatic stay of the execution of this judgment until the Court disposes of those objections and thereby vacates, modifies, or affirms the judgment previously entered.

/s/ Penelope R. Cunningham cs
Judge Court of Common Pleas
Division of Domestic Relations

[Petitioner's Note: Magistrate's Decision, App. 231-App. 247, was amended inter alia @ App. 139; 146-147; T.p. 190, p. 118; was adopted except as otherwise ordered, @ App. 150, last para.; App. 69, # 2.]

Worksheet
Hamilton County Domestic Relations Court
Child Support Computation
Sole Residential Parent or Shared Parenting Order

Name of Parties: BARDES
Case No. A /DR DR9402798

Mother is residential parent
Mother has 12 pay periods/yr
Father has 12 pay periods/yr

Number of minor children : 2

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
1.a Annual gross income from employment OR, when determined appropriate by the court or agency, average annual gross income from employment over a reasonable period of years (exclude overtime and bonuses	$50,000	$10,920	
1.b Amount of overtime and bonuses:			
FATHER: YR 3 $	$0		
YR 2 $	$0		
YR 1 $	$0		
AVERAGE	$0		
Lesser of 3 year average or year 1	$0	$0	
(Include in Column I and/or Column II the average of the three years or the year 1 amount, whichever is less. IF THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME AND/OR BONUSES DURING THE CURRENT CALENDAR YEAR WILL MEET OR EXCEED THE AMOUNT THAT IS THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT. IF, HOWEVER, THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME/BONUSES DURING THE CURRENT CALENDAR YEAR WILL BE LESS THAN THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT, INCLUDE ONLY THE AMOUNT REASONABLY EXPECTED TO BE EARNED THIS YEAR.)	$50,000	$10,920	
2 Annual income from interest and dividends (whether or not taxable)	$1,928	$11,129	
3 Annual income from unemployment compensation	$0	$0	
4 Annual income from workers' compensation or disability insurance	$0	$0	
5 Other annual income (identify)	$23,791	$0	
6 Total annual gross income (add lines 1-5)	$75,717	$22,049	
7 Annual court-ordered support paid for other children	$0	$0	
8 Adjustment for minor children born to either parent and another parent, which children are living with this parent (number of children times federal income tax exemption less child support received for the year, not to exceed the federal tax exemption)	$0	$0	
9 Annual court-ordered spousal support paid to a former spouse	$0	$0	
10 Amount of local income taxes actually paid or estimated to be	$1,550	$0	
11 For self-employed individuals, deduct 5.6% of adjusted gross income or the actual marginal difference between the actual rate paid by the self-employed individual and the F.I.C.A. rate	$0	$0	
12 For self-employed individuals, deduct ordinary and necessary business expenses	$0	$0	
13 Total gross income adjustments (add lines 7-12)	$1,550	$0	
14 Adjusted annual gross income (subtract line 13 from 6)	$74,167	$22,049	
15 Combined annual income that is basis for child support order (add line 14, Col. I and Col. II)			$96,215
16 Percentage of parent's income to total income:			
a. Father (divide line 14, Col. I by line 15, Col. III)	77.08%		
b. Mother (divide line 14, Col. II by line 15, Col. III)		22.92%	= 100%

ENTERED
AUG 2 7 1998
IMAGE 193

App. 248

BEST AVAILABLE COPY

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
17 Basic combined child support obligation (Refer to basic child support schedule in division (D) of section 3113.215 of the Revised Code; in the first column of the schedule, locate the sum that is nearest to the combined annual income listed in line 15, Col. III of this worksheet, then refer to the column of the schedule that corresponds to the number of children in this family. If the income of the parents is more than one sum and less than another sum in the first column of the schedule, you may calculate it a basic combined child support obligation based upon the obligation for those two sums).....			
18 Annual child care expenses that are work, employment training, or education related, as approved by the court or agency (deduct the tax credit from annual cost, whether or not claimed).....	$575	$0	
19 Marginal, out-of-pocket costs, necessary to provide for health insurance for the children who are the subject of this order.....	$1,301	$0	
20 Total child care and medical expenses (Add lines 18 and 19, Col. I and II).....	$1,761	$0	
21 Combined annual child support obligation for this family (Add lines 17 and 20, Col. I and II).....			$17,843
22 Annual support obligation/parent:			
a. Father (multiply line 21, Col. III, by line 16a).....	$13,754		
b. Mother (multiply line 21, Col. III, by line 16b).....		$4,089	
23 Adjustment for actual expenses paid for annual child care expenses and marginal, out-of-pocket costs, necessary to provide for health insurance (enter number from line 18 or 19 if applicable).....	$1,761	$0	
24 Actual annual obligation (Subtract line 23 from Line 22a or 22b	$11,993	$4,089	
25 Gross household income per party after exchange of child support (add lines 14 and 24, Col. I or II for residential parent or, in the case of shared parenting order, the parent to whom child support will be paid; subtract line 24 Col. I or II from line 14 for parent who is not the residential parent or, in the case of shared parenting order, the parent who will pay child support).....	$62,174	$34,042	
26 Comments, rebuttal, or adjustments to correct figures in lines 24, Col. I and 24, Col. II if they would be unjust or inappropriate and would not be in best interest of the child or children (specific facts to support adjustments must be included).....	$0	$0	

ENTERED
AUG 2 7 1998
IMAGE 494

082

27 Final figure (this amount reflects final annual child support obligation)..... Father $11,993.07 is Obligor

28 For Decree: child support per month per child (divide obligor's annual share, line 27, by 12 and by number of children)..... $499.71

29 For deduction order: child support per pay period (calculate support per pay period from figure on line 28) plus appropriate processing charge..... $1,019.41

Calculations have been reviewed.

Signatures:

_____
Father - (I do/do not consent)
Sworn to before me and subscribed in my presence this ____day of _____, 19____

_____
Notary Public

_____
Mother - (I do/do not consent)
Sworn to before me and subscribed in my presence this ____day of _____, 19____

_____
Notary Public

_____ _____
Attorney for Father Attorney for Mother

T.d. 189

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes	:	Enter Cunningham, J.
Plaintiff	:	Date 1/23/1998
270-52-9846 7/21/56	:	Case No. A/DR
DOB	:	DR 94-02798
	:	File No. E
-vs/and-	:	CSEA NO. AA/AB
Samuel P. Todd III	:	JUDGE CUNNINGHAM
Defendant	:	**ENTRY**
293-56-1656 10/9/54	:	
DOB	:	

1. Plaintiff's Motion for Extension of Time, filed 1/15/1998 is hereby granted, with Closing Arguments now due at 4:00 p.m. on Mar. 18, 1998. /s/ DB, WA ~~The issues of college education expenses are not to be raised or included in such Closing Arguments as~~ The Judge has agreed to take the issues relating to college expenses under advisement.

2. Plaintiff's Motion for Declaratory Judgment filed 12/10/97 shall be set on the Judge's docket for a three hour oral argument on the law only. Such Motion shall be heard at the same time as the Objections to Magistrate Murphy's Decision on Child Support.

3. The issues of college education expenses shall not be included in such closing arguments.

/s/ William S. Abernethy
Attorney for Defendant

/s/ D Bardes
Plaintiff/Pro Se
1/26/98

T.d. 149

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ellen Bardes SS#: 270-52-9846 DOB: 7/21/56 Plaintiff -vs- Samuel Pogue Todd III SS# 293-56-1656 DOB: 01/04/54 Defendant	)	Case No: DR 9402798 File No: E 194749-0-7 CSEA AA# 89964/01 **MAGISTRATE'S ORDER** Judge: Cunningham

ORDER

(FILED JUL. 17, 1997)

1. The deadline for the parties to file their proposed findings of fact and conclusions of law for Judge Cunningham's parenting decision, is extended by agreement of the parties to August 15, 1997.

2. The Plaintiff's motion for continuance of the July 31, 1997, property trial is denied.

3. The Plaintiff's motion to determine jurisdiction re: college expenses, is dismissed, as this matter is more appropriately addressed in the property trial. **This is not a decision on the issue of whether or not this court has jurisdiction over the issue of college expenses.**

Copies of this order have been personally given to/ mailed to the parties or their counsel. This Order is

effective immediately. Either party may appeal this order by filing a Motion to Set the Order Aside within ten days of the date this order is entered. The pendency of a Motion to Set the Order Aside does not stay the effectiveness of this order unless the Magistrate or Judge grants a stay.

/s/ William L. Murphy
Magistrate William L. Murphy
07/17/97

Copies sent by Clerk of Courts to:
D'ELLEN BARDES, PRO SE
WILLIAM S. ABERNETHY, JR., ESQ.

T.d. 140

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. DR 9402798
	:	File No. E-194749-0-7
Plaintiff	:	**DECISION**
-vs-	:	**ALLOCATING**
SAMUEL POGUE TODD III	:	**PARENTAL RIGHTS AND RESPONSIBILITIES**
Defendant	:	Judge Cunningham
	:	(FILED MAY 23, 1997)

The above captioned matter came before the Court for trial on the merits of the pre-decree allocation of parental rights and responsibilities for the parties' two minor children, to wit: Samuel Pogue Todd IV, born February 19, 1990 and Garrison Todd, born September 26, 1991.

Based upon the evidence and testimony presented and in full consideration of the statutory provisions of O.R.C. Section 3109.04 as well as the applicable case law, the Court finds that shared parenting is in the best interest of the minor children. The Court will accept Father's Shared Parenting Plan as filed on January 7, 1997 with the following modifications:

1. The financial issues of child support, **educational expenses**, health insurance/**medical expenses**, life insurance, cost of children's activities, **post-high school expenses and allocation of the tax dependency exemption** for the minor

children shall be referred to the assigned Magistrate for hearing and disposition unless the parties are able to agree in writing as to the resolution of said issues.

2. Removal of Children From the Court's Jurisdiction: See Section 3.2 on Page 8 of Father's Plan. The Court requires the following modification **unless the parties agree otherwise in writing**: The parties recognize that if either of them should move from this jurisdiction, it will necessarily require a modification or termination of this Plan. Neither party shall remove the minor children from Hamilton County or its contiguous Ohio counties and establish residence for them in another county without a Court order or an agreement signed by the parties and filed with the Court.

3. Medical Decision: See Section 11.5 on Page 14 of Father's Plan. The Court requires the following modification unless the parties agree otherwise in writing: Except in the case of routine visits and emergencies, all major decisions regarding the children's medical, dental, orthodontic, optical, psychological, psychiatric, pharmaceutical drugs and hospital or physical care, attention or treatment shall be jointly made by the parties following consultation between them and in collaboration with the health care provider. In the event the parties are unable to agree, Mother shall determine the need for said care, attention and/or treatment. Father will be entitled to a second opinion at his expense.

Except as noted otherwise herein, all other provisions of Defendant/Father's Shared Parenting Plan are found to be in the best interest of the minor children. **Upon**

Defendant/Father's submission of the above noted modifications and following hearing and disposition of the financial issues referenced above by the assigned Magistrate, the Court will accept and adopt Defendant/Father's Plan as the Court's Order of Allocation of Parental Rights and Responsibilities.

IT IS SO ORDERED

/s/ Penelope R. Cunningham
Judge Penelope R. Cunningham
May 23, 1997

c: William S. Abernethy, Esquire
Dee Ellen Bardes, Plaintiff

APPENDIX B1

G.O.P. Mailing Touts Clerk's Website

[SEAL] ABOUT THE CLERK
Jim Cissell • Clerk of Courts Hamilton County, Ohio

Top 10 Award
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www.justiceserved.com

Justice Served Named
www.courtclerk.org
#1 website

AS CLERK OF COURTS JIM CISSELL HAS:

- Totally modernized the Clerk of Court's office.
- **www.courtclerk.org named America's #1 court web site (now getting 2.4 million hits per month).**
- Finalist in Smithsonian Computerworld Awards (others were GTE, Lucent Technologies, the Federal Reserve Board and the FDIC) for the country's most advanced court computer system.
- Established three suburban offices open until 6:00 p.m. for the public's convenience.
- Published various court information guides including *Small Claims Guide, How to Obtain a Passport* and *How to Secure an Auto Title.*
- Honored by "Mothers Against Drunk Driving."
- Returned savings of millions of dollars to the County treasury, some of which were used to fund a domestic violence task force and help fund video cameras for 17 local police departments.

(<Credentials *continued* on next page>)

G.O.P. Mailing Attest To
Clerk of Court's High Profile

NO ONE MATCHES JIM CISSELL'S BACKGROUND AND EXPERIENCE:

- President of the Ohio Clerk of Courts Association.
- Member of the Ohio Bicentennial Commission.
- Member of the Ohio Courts Futures Commission.
- Member of the Ohio Supreme Court Advisory Committee on Technology and the Courts.
- United States Attorney, Southern District of Ohio.
- President-elect, National Association of Former U.S. Attorneys.
- Author of *Federal Criminal Trials* and *Ohio Oil and Gas Law.*
- Listed in *Who's Who in America* and *Who's Who in American Law.*
- Graduate of both Xavier University and the University of Cincinnati College of Law.
- Attended Ohio State University as a Ford Foundation Fellow.

JIM CISSELL for CLERK OF COURTS

Jim Cissell
for CLERK OF COURTS [SEAL]
Ohio Republican Party
211 S. 5th Street
Columbus, Ohio 43215

APPENDIX C

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant,	:	**Case No. 00-2117**
	:	**ENTRY**
v.	:	
	:	
Samuel Pogue Todd III, Appellee.	:	
	:	

(FILED DEC. 20, 2000)

This cause is pending before the Court as a discretionary appeal and **claimed appeal of right**. Upon consideration of appellant's motion for stay of court of appeals' judgment,

IT IS ORDERED by the Court that the motion for stay be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

(Stamped 92-464)

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	:	**Case No. 00-2117** **ENTRY**

(FILED FEB. 14, 2001)

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as **not involving any substantial constitutional question**.

COSTS:

Docket Fee, $40.00, paid by Dee Ellen Bardes.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

(Stamped 93-124)

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	: : : : : :	**Case No. 00-2117** **RECONSIDERATION ENTRY** (Hamilton County)

(FILED APR. 04, 2001)

IT IS ORDERED by the Court that the motion for reconsideration in this case be, and hereby is, denied.

(Court of Appeals No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-2254:
Separate Appeal Of Failure
To Certify Conflicts

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	:	Case No. 00-2254 **ENTRY**

(FILED JAN. 17, 2001)

This cause is pending before the Court as a discretionary appeal. Upon consideration of appellant's motion for stay of court of appeals' judgment entry,

IT IS ORDERED by the Court that the motion for stay be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-2254:
Separate Appeal Of Failure
To Certify Conflicts

The Supreme Court of Ohio

Dee Ellen Garrison Bardes,	:	Case No. 00-2254
Appellant,	:	**ENTRY**
v.	:	
Samuel Pogue Todd III,	:	
Appellee.	:	

(FILED FEB. 22, 2001)

This cause is pending before the Court as a discretionary appeal. It appears from the records of this Court that appellant has not filed a memorandum in support of jurisdiction, due December 18, 2000, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this case with the requisite diligence. Upon consideration thereof,

IT IS ORDERED by the Court that this cause be be [sic], and hereby is dismissed, sua sponte.

COSTS:

Docket Fee, $40.00, paid by Dee Ellen Garrison Bardes.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-2254:
Separate Appeal Of Failure
To Certify Conflicts

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	:	Case No. 00-2254 **RECONSIDERATION ENTRY** (Hamilton County)

(FILED MAR. 19, 2001)

IT IS ORDERED by the Court that this motion for reconsideration in this case be, and hereby is, denied.

(Court of Appeals No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-545:
Separate Appeal Of Failure
To Hear Case Sitting "En Banc"

The Supreme Court of Ohio

Dee Ellen Garrison Bardes,	:	Case No. 00-545
Appellant,	:	**ENTRY**
v.	:	
Samuel Pogue Todd III,	:	
Appellee.	:	

(FILED JUN. 14, 2000)

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Dee Ellen Garrison Bardes.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

APPENDIX D

28 U.S.C. § 1738B. Full faith and credit for child support orders

(a) General Rule. – The appropriate authorities of each State –

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) Definitions. – In this section:

"child" means –

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

"child's State" means the State in which a child resides.

"child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

"child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

"child support order" –

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes –

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

"contestant" means –

(A) a person (including a parent) who –

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

"court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

"modification" means a change in a child support order that affects the amount, scope, or duration of the

order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) Requirements of Child Support Orders. – A child support order made by a court of a State is made consistently with this section if –

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g) –

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing Jurisdiction. – A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority To Modify Orders. – A court of a State may modify a child support order issued by a court of another State if –

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) Recognition of Child Support Orders. – If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of

the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of Modified Orders. – A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of Law. –

(1) In general. – In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of state of issuance of order. – In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation. – In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of

the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for Modification. – If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

CREDIT(S)
2000 Electronic Update

(Added Pub.L. 103-383, § 3(a), Oct. 22, 1994, 108 Stat. 4064, and amended Pub.L. 104-193, Title III, § 322, Aug. 22, 1996, 110 Stat. 2221; Pub.L. 105-33, Title V, § 5554, Aug. 5, 1997, 111 Stat. 636.)

<General Materials (GM) – References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. Senate Report No. 103-361, see 1994 U.S. Code Cong. and Adm. News, p. 3259.

1996 Acts. House Report No. 104-651 and House Conference Report No. 104-725, see 1996 U.S. Code Cong. and Adm. News, p. 2183.

1997 Acts. House Report No. 105-149, House Conference Report No. 105-217, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 176.

Amendments

1997 Amendments. Subsec. (f)(4). Pub.L. 105-33, § 5554(1) substituted "a court having jurisdiction over the parties shall issue a child support order, which must be recognized." for "a court may issue a child support order, which must be recognized."

Subsec. (f)(5). Pub.L. 105-33, § 5554(2) inserted "under subsection (d)" after "jurisdiction".

1996 Amendments. Subsec. (a)(2). Pub.L. 104-193, § 322(1), substituted "subsections (e), (f) and (i)" for "subsection (e)".

Subsec. (b). Pub.L. 104-193, § 322(2), added provisions defining "child's home State".

Subsec. (c). Pub.L. 104-193, § 322(3), added "by a court of a State" preceding "is made".

Subsec. (c)(1). Pub.L. 104-193, § 322(4), added "and subsections (e), (f) and (g)" following "located".

Subsec. (d). Pub.L. 104-193, § 322(5), added "individual" preceding "contestant" and substituted "subsections (e) and (f)" for "subsection (e)".

Subsec. (e). Pub.L. 104-193, § 322(6), substituted "modify a child support order issued" for "make a modification of a child support order with respect to a child that is made".

Subsec. (e)(1). Pub.L. 104-193, § 322(7), added "pursuant to subsection (i)" following "order".

Subsec. (e)(2). Pub.L. 104-193, § 322(8), added "individual" preceding "contestant", wherever appearing, and

substituted "with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume" for "to that court's making the modification and assuming".

Subsec. (f). Pub.L. 104-193, § 322(9), (10), added subsec. (f). Former subsec. (f) was redesignated (g).

Subsec. (g). Pub.L. 104-193, § 322(9), redesignated former subsec. (f) as (g). Former subsec. (g) was redesignated subsec. (h).

Pub.L. 104-193, § 322(11), in subsec. heading, substituted "modified" for "prior" and substituted "subsections (e) and (f)" for "subsection (e)".

Subsec. (h). Pub.L. 104-193, § 322(9), redesignated former subsec. (g) as (h).

Subsec. (h)(2). Pub.L. 104-193, § 322(12)(A), added "including the duration of current payments and other obligations of support" following "support order,".

Subsec. (h)(3). Pub.L. 104-193, § 322(12)(B), added "arrears under" following "enforce".

Subsec. (i). Pub.L. 104-193, § 322(13), added subsec. (i).

Effective and Applicability Provisions

1997 Acts. Amendments by Pub.L. 105-33 made by sections 5531 to 5556 to take effect as if included in the enactment of Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193, Aug. 22, 1996, 110 Stat. 2105), except for amendments made by section 5532(b)(2) (amending section

608(a)(3)(A) of Title 42, The Public Health and Welfare), see section 5557 of Pub.L. 105-33, set out as a note under section 608 of Title 42, The Public Health and Welfare.

1996 Acts. For effective date of Title III of Pub.L. 104-193, see section 395(a) to (c) of Pub.L. 104-193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

Congressional Findings and Declaration of Purpose

Section 2 of Pub.L. 103-383 provided that:

* * *

[See PL 103-383 at App. 275-278 for congressional intent]

UNITED STATES PUBLIC LAWS
103rd Congress - Second Session
Convening January 25, 1994

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Additions and Deletions are not identified in this document.

For Legislative History of Act, see LH database or Report for this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 103-383 (S 922)
October 20, 1994

FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT

An Act To provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought or consents to the seeking of the modification in that court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

28 USCA § 1 NOTE

SECTION 1. SHORT TITLE.

This Act may be cited as the "Full Faith and Credit for Child Support Orders Act".

28 USCA § 1738B NOTE

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS. – The Congress finds that –

(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

(2) the laws by which the courts of different jurisdictions determine their **authority to establish child support orders are not uniform;**

(3) those laws, along with **the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries –**

(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside **to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel** and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity;

(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to **inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence;**

(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments

for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

(E) lead to the **excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law**; and

(4) among the results of the conditions described in this subsection are –

(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

(B) the deprivation of rights of liberty and property without due process of law;

(C) burdens on commerce among the States; and

(D) harm to the welfare of children and their parents and other custodians.

(b) STATEMENT OF POLICY. – In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

(c) PURPOSES. – The purposes of this Act are –

(1) to facilitate the enforcement of child support orders among the States;

(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.

SEC. 3. FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS.

28 USCA § 1738B

(a) IN GENERAL. – Chapter 115 of title 28, United States Code, is amended by inserting after section 1738A the following new section:

"§ 1738B. Full faith and credit for child support orders

"(a) GENERAL RULE. – The appropriate authorities of each State –

"(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

"(2) shall not seek or make a modification of such an order except in accordance with subsection (e).

"(b) DEFINITIONS. – In this section:

" 'child' means –

"(A) a person under 18 years of age; and

"(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

" 'child's State' means the State in which a child resides.

" 'child support' means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

" 'child support order' –

"(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

"(B) includes –

"(i) a permanent or temporary order; and

"(ii) an initial order or a modification of an order.

" 'contestant' means –

"(A) a person (including a parent) who –

"(i) claims a right to receive child support;

"(ii) is a party to a proceeding that may result in the issuance of a child support order; or

"(iii) is under a child support order; and

"(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

" 'court' means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

" 'modification' means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

" 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

"(c) REQUIREMENTS OF CHILD SUPPORT ORDERS. – A child support order made is made consistently with this section if –

"(1) a court that makes the order, pursuant to the laws of the State in which the court is located –

"(A) has subject matter jurisdiction to hear the matter and enter such an order; and

"(B) has personal jurisdiction over the contestants; and

"(2) reasonable notice and opportunity to be heard is given to the contestants.

"(d) CONTINUING JURISDICTION. – A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any contestant unless the court of another State, acting in

accordance with subsection (e), has made a modification of the order.

"(e) AUTHORITY TO MODIFY ORDERS. – A court of a State may make a modification of a child support order with respect to a child that is made by a court of another State if –

"(1) the court has jurisdiction to make such a child support order; and

"(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any contestant; or

"(B) each contestant has filed written consent to that court's making the modification and assuming continuing, exclusive jurisdiction over the order.

"(f) ENFORCEMENT OF PRIOR ORDERS. – A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsection (e).

"(g) CHOICE OF LAW. –

"(1) IN GENERAL. – In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

"(2) LAW OF STATE OF ISSUANCE OF ORDER. – In interpreting a child support order, a court shall apply the law of the State of the court that issued the order.

"(3) PERIOD OF LIMITATION. – In an action to enforce a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.".

28 USCA Ch. 115

(b) TECHNICAL AMENDMENT. – The chapter analysis for chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738A the following new item:

"1738B. Full faith and credit for child support orders.".

Approved October 20, 1994.

PL 103-383, 1994 S 922

5 U.S.C. § 552a. Records maintained on individuals

(a) **Definitions.** – For purposes of this section –

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a

purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program" –

(A) means any computerized comparison of –

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of –

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include –

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches –

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel[1]

(vi) matches performed for foreign counter-intelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

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[1] So in original. Probably should be "personnel;".

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals[2] entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure. – No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be –

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

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[2] So in original. Probably should be "and individuals".

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) **Accounting of certain disclosures.** – Each agency, with respect to each system of records under its control, shall –

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of –

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in

accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) **Access to records.** – Each agency that maintains a system of records shall –

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and –

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either –

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated

by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) **Agency requirements.** – Each agency that maintains a system of records shall –

(1) **maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished** by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual –

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and

character of the system of records, which notice shall include –

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) **Agency rules**. – In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall –

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his

record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) **Civil remedies.** – Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the

production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of –

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of

action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) **Rights of legal guardians.** – For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) **Criminal penalties.** – Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section

shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) **General exemptions.** – The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is –

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an

individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) **Specific exemptions.** – The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is –

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) **Archival records.** – Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient

historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) **Government contractors.** – When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) **Mailing lists.** – An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) **Matching agreements.** – (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written

agreement between the source agency and the recipient agency or non-Federal agency specifying –

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to –

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall –

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if –

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) **Verification and opportunity to contest findings.** – (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until –

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that –

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of –

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) **Sanctions.** – (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless –

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) **Report on new systems and matching programs.** – Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) **Biennial report.** – The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report –

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) **Effect of other laws.** – No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise

accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) **Data Integrity Boards.** – (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board –

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including –

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.[3]

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

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[3] So in original. Probably should be "cost-effective".

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that –

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

[(7) Redesignated (6)]

(v) **Office of Management and Budget responsibilities.** – The Director of the Office of Management and Budget shall –

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

CREDIT(S)

1996 Main Volume

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94-183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L. 98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub.L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611.)

2000 Electronic Update

(As amended Pub.L. 104-193, Title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub.L. 104-226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub.L. 104-316, Title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub.L. 105-34, Title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub.L. 105-362, Title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub.L. 106-170, Title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908.)

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PENDING LEGISLATION

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13 2001 CONG US HR 2205USCAS552A, 107th CONGRESS, 1st Session, To amend title II of the Social Security Act and the Internal Revenue Code of 1986 to protect the integrity and confidentiality of Social Security account numbers issued under such title, to prohibit the establ (Jan 03, 2001), Introduced in House, Technical or conforming amendment.

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§ 552a. Records maintained on individuals

CREDIT(S)

1996 Main Volume

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94- 183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L.

98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub. L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611.)

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* * *

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

SECTION 2 OF PUB.L. 93-579 PROVIDED THAT:

"(a) THE CONGRESS FINDS THAT –

"(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

"(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

"(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

"(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

"(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

"(b) The purpose of this act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to –

"(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

"(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

"(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

"(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner

that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

"(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

"(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act."

Construction of 1988 Amendments

Section 9 of Pub.L. 100-503 provided that: "Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] shall be construed to authorize –

"(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by Federal agencies;

"(2) the direct linking of computerized systems of records maintained by Federal agencies;

"(3) the computer matching of records not otherwise authorized by law; or

"(4) the disclosure of records for computer matching except to a Federal, State, or Local agency."

DISCLOSURE OF SOCIAL SECURITY NUMBER

SECTION 7 OF PUB.L. 93-579 PROVIDED THAT:

"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to –

"(A) any disclosure which is required by Federal statute, or

"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

GUIDELINES AND REGULATIONS FOR MAINTENANCE OF PRIVACY AND PROTECTION OF RECORDS OF INDIVIDUALS

Section 6 of Pub.L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing

provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub.L. 100-503, § 6(c), Oct. 18, 1988, 102 Stat. 2513.

Implementation Guidance for 1988 Amendments

Section 6(b) of Pub.L. 100-503 provided that: "The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988]."

Limitation on Application of Verification Requirement

Section 7201(c) of Pub.L. 101-508 provided that: "Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code [subsec. (p)(1)(A)(ii)(II) of this section], as amended by section 2 [probably means section 7201(b)(1) of Pub.L. 101-508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b- 7), until the earlier of –

"(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

"(2) 30 days after the date of publication of guidance under section 2(b) [probably means section

7201(b)(2) of Pub.L. 101-508, set out as a note under this section]."

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub.L. 93-579, as amended by Pub.L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1997, pursuant to section 5(g) of Pub.L. 93-579.

Publication of Guidance Under Subsection (p)(1)(A)(ii)

Section 7201(b)(2) of Pub.L. 101-508 provided that: "Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code [subsec. (p)(1)(A)(ii) of this section], as amended by this act."

APPENDIX E

UNITED STATES CONSTITITION

ARTICLE I

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * *

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

* * *

SECTION 10. No state shall enter into any Treaty, Alliance, or Confederation, grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

* * *

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

* * *

ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XXVI

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

[More Appendix A, Appendix B & Appendix C Orders Omitted Above]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Appellant,

vs.

SAMUEL POGUE TODD III

Appellee.

APPEAL NO. C-000055

ENTRY OVERRULING MOTION TO CERTIFY

This cause came on to be considered upon the motion of the appellant filed herein for an Order of this Court to certify a conflict to the Ohio Supreme Court, and

The Court, upon consideration thereof, finds that the motion is not well taken and is overruled.

To The Clerk:

Enter upon the Journal of the Court on 3/24/00 per order of the Court.

By: /s/ Hildebrandt, J.
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant

APPEAL NO. C-000055

SAMUEL POGUE TODD III
Appellee

ENTRY STRIKING FILING OF MAY 29, 2001

(ENTERED JUNE 15, 2001)

This cause came on to be considered upon the PRO SE "Plaintiff/appellant/petitioner's Motion invoking limited concurrent jurisdiction & seeking relief to facilitate and enable federal jurisdiction by the United States Supreme Court" filed herein on May 29, 2001, and

The Court *sua sponte* strikes same for failure to comply with the Rules of Appellate Procedure.

To The Clerk:
Enter upon the Journal of the Court on 6/15/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant

vs.

SAMUEL POGUE TODD III
Appellee

APPEAL NO. C-000055

ENTRY OVERRULING MOTION TO RECONSIDER

(ENTERED JULY 13, 2001)

This cause came on to be considered upon the PRO SE motion of the appellant filed herein for reconsideration, and

The Court, upon consideration thereof, finds that the motion is not well taken and is overruled.

To The Clerk:
Enter upon the Journal of the Court on 7/13/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant

SAMUEL POGUE TODD III
Appellee

APPEAL NO. C-000055

ENTRY STRIKING FILING OF JULY 24, 2001

This cause came on to be considered upon the PRO SE filing of appellant filed herein on July 24, 2001 captioned: Appellant/Petitioner's Notice of Inter Alia: 1) United States Supreme Court Granting Final Extension of Time, 2) Extraordinary Writs require Preclusion of Adequate Relief from any Court (S.C. Rule 20.1), and 3) Concurrent Jurisdiction of First District and SCO during Pendency of Appeal, SCO-01-1231, and

The Court *sua sponte* strikes same for failure to comply with the Rules of Appellate Procedure as there is no provision within the appellate rules for the filing of same.

To The Clerk:

Enter upon the Journal of the Court on 8/10/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copies sent to all counsel)

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. DR9402798
	:	File No. E-194749
Plaintiff/Petitioner	:	Judge Cunningham
-vs-	:	**ORDER**
SAMUEL P. TODD, III	:	**DISMISSING**
Defendant/Respondent	:	**MOTION TO STRIKE**

(ENTERED JUL. 24, 2001)

The above captioned matter came before the Court on Plaintiff/Petitioner's motion to strike filed on June 22, 2001. Plaintiff/Petitioner seeks to have the court strike Defendant/Respondent's June 14, 2001 motion for a more definitive statement. However, on June 26, 2001 Defendant/Respondent filed a notice withdrawing his motion. As the question before the court is now moot, the court hereby dismisses Plaintiff/Petitioner's motion to strike.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Plaintiff/Appellant/ Petitioner -vs- SAMUEL P. TODD, III Defendant/Appellee/ Respondent	Case No. DR9402798 File No. E-E194749 Judge Cunningham **Order Dismissing Plaintiff/Appellant/ Petitioner's Motion Invoking Limited Jurisdiction & Motion for Findings of Fact on Federal Claims**

(ENTERED JUL. 24, 2001)

The above captioned matter came before the court on Plaintiff's motion invoking limited jurisdiction and motion for findings of fact on federal claims filed May 23, 2001 and June 6, 2001, respectively. Defendant responded with a motion to dismiss on June 25, 2001 followed by Plaintiff's reply on July 3, 2001.

Upon consideration of the matters pending before the court, the court hereby dismisses Plaintiff's motions for lack of jurisdiction.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES	Case No. DR9402798
Plaintiff	File No. E-194749
-vs-	Judge Cunningham
SAMUEL P. TODD, III	**ORDER FOR SUBMISSION AND DETERMINATION WITHOUT ORAL HEARING**
Defendant	

(ENTERED JUNE 4, 2001)

Plaintiff/Appellant/Petitioner's Motion Invoking Limited Jurisdiction & Seeking Relief filed May 23, 2001 as supplemented on May 25 and May 29, 2001 shall be decided by the Court without oral hearing pursuant to Civil Rule 7(B)(2) of the Ohio Rules of Civil Procedure. Defendant/Appellee/Respondent shall have ten (10) days from journalization of this order to file his response to the motion. Plaintiff shall have ten (10) days from the filing of a response to file a reply. Thereafter, the Court will take the matter under submission and render its decision.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant,

APPEAL NO. C-010498
TRIAL NO. DR 9402798

vs.

SAMUEL POGUE TODD III
Appellee.

ENTRY OF DISMISSAL

This cause came on to be considered upon the appeal from the trial court, and

The Court *sua sponte* dismisses the appeal for failure of the appellant to comply with the Ohio Rules of Appellate Procedure to wit: the Order from which the appeal is taken is not a final appealable order.

It is further Ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To The Clerk:

Enter upon the Journal of the Court on 8/17/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copy sent to counsel)

THE SUPREME COURT OF OHIO

Dee Ellen Garrison Bardes,
Appellant,

v.

Samuel Pogue Todd III,
Appellee.

Case No. 00-2117

ENTRY

(FILED JULY 16, 2001)

This cause came on for further consideration upon appellant's emergency motion demanding, *inter alia*, issuance of certificates of federal jurisdiction. Upon consideration thereof,

IT IS ORDERED by the Court that the emergency motion demanding, *inter alia*, issuance of certificates of federal jurisdiction be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd, III, Appellee.	:	Case No. 00-2117 **ENTRY**

(FILED JUL. 26, 2001)

This cause came on for further consideration upon appellant's **emergency motion for stay of this Court's July 16**, 2001, entry, or, in the alternative, motion to vacate. Upon consideration thereof,

IT IS ORDERED by the Court that the motion be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd, III, Appellee.	:	Case No. 00-545 **ENTRY**

(FILED APR. 19, 2000)

This cause is pending before the Court as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's motion for stay of court of appeals' proceedings and appellee's motion to strike motion for stay of proceedings,

IT IS ORDERED by the Court that the motion for stay be and hereby is, denied.

IT IS FURTHER ORDERED by the Court that the motion to strike be, and hereby is, denied as moot.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

PRINTED: 7/09/01
REPORT: PRDOCKT

* * * THE SUPREME COURT OF OHIO * * *
CASE INFORMATION

GENERAL INFORMATION

CASE: **01-1231** Discretionary Appeal (P & GGI); Claimed Appeal of Right
FILED: 07/06/01

Dee Ellen G. Bardes
v. Samuel Pogue Todd III

PARTIES AND ATTORNEYS

Dee Ellen G. Bardes; ANT – Appellant
NOT REPRESENTED BY COUNSEL

Samuel Pogue Todd,; AEE – Appellee
REPRESENTED BY: William Stuart Abernethy, Jr.

DOCKET ITEMS

Date	Description	Filed By
07/06/01	Notice of appeal of Dee Ellen G. Bardes	ANT
	Motion for stay of court of appeals decision	ANT
	And motion to consolidate case with 00-2117	ANT
07/09/01	Copy of notice of appeal sent to clerk of court of appeals	
	Memorandum in support of jurisdiction	ANT

* * * END OF CASE INFORMATION * * *

(certified seal)

APPENDIX F

(LOGO)

NEW JERSEY GENERAL ASSEMBLY

[Names And Address Omitted In Printing]

March 15, 1999

Ms. Dee Bardes
1035 Paxton Avenue
Cincinnati, OH 47208-2828

Dear Ms. Bardes:

Thank you for contacting my office regarding Assembly Bill 776, which pertains to the issue of a divorced parents' obligation to pay for their children's post high school education expenses under certain circumstances. I very much appreciate the time you took to obtain information on this important legislation.

The purpose of this legislation is to essentially codify the New Jersey Supreme Court case, Newburgh v. Arrigo, which held that, in general, financially capable parents should contribute to the higher education costs of children who are qualified students. Since this ruling, judges have been regularly following the determination made by the judge in that particular case. In some instances, however, judges have been known to stray from this ruling, only to cause lengthy and costly appeal processes for many of New Jersey's citizens. A-776 would add this ruling to the statute, thereby strengthening the case ruling, and forcing judges to follow the ruling. The passing of this legislation would also save many citizens from the rigors of this appeal process, and allow for fairness

between parents who wish to send their children on to a post high school education.

Thank you again for your interest in A-776. I hope that I have been of assistance to you.

Sincerely,

/s/ Loretta Weinberg
Loretta Weinberg
Assemblywoman, District 37

LW:ais
a776

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

June 12, 2001
(Filed Jun. 18, 2001)

Clerk
Court of Appeals of Ohio,
Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202

Re: Dee Ellen Garrison Bardes
v. Samuel Pogue Todd, III
Application No. 00A1084
(Your Court No. C000055)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on June 12, 2001, extended the time to and including August 2, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Ms. Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

Mr. William S. Abernethy, Jr.
Strauss & Troy
150 E. 4th Street, 4th Floor
Cincinnati, OH 45202

Clerk
Court of Appeals of Ohio,
Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

July 18, 2001

Ms. Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

RE: Dee Ellen Garrison Bardes
v. Samuel Pogue Todd, III
Application No. 00A1084

Dear Ms. Bardes:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on July 18, 2001, extended the time to and including September 1, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Ms. Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

Mr. William S. Abernethy, Jr.
Strauss & Troy
150 E. 4th Street, 4th Floor
Cincinnati, OH 45202

Clerk
Court of Appeals of Ohio,
Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202

[SEAL] **U.S. Department of Justice**
Civil Division
Washington, D.C. 20530

July 26, 2001

Ms. Dee Ellen G. Bardes
1035 Paxton Ave.
Cincinnati, Ohio 45208-2828

Dear Ms. Bardes:

This letter responds to your request that the government intervene in Supreme Court on your behalf in *Bardes v. Todd*, 139 Ohio App.3d 938, 746 N.E.2d 229 (2000). The Department of Justice represents the interests of the federal government in the courts and only rarely participates in private lawsuits in the Supreme Court unless the Court has granted certiorari. Unfortunately, I must advise you that your divorce and child-support action is not the kind of case in which the government would make an exception to its general policy of not taking sides in a domestic relations dispute.

I am returning the extensive papers that you sent us as you may want to use them.

Very truly yours,

/s/ Anthony J. Steinmeyer
Anthony J. Steinmeyer
Assistant Branch Director

APPENDIX D – Continued

5 U.S.C.A. § 551

§ 551. Definitions

For the purpose of this subchapter –

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include –

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title –

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

* * *

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of

right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

* * *

UNITED STATES CODE ANNOTATED
TITLE 26. INTERNAL REVENUE CODE
SUBTITLE A – INCOME TAXES
CHAPTER 1 – NORMAL TAXES AD SURTAXES
SUBCHAPTER F – EXEMPT ORGANIZATIONS
PART VIII – HIGHER EDUCATION SAVINGS ENTITIES

26 U.S.C. § 529 (I.R.C. § 529)

§ 529. Qualified State tuition programs

(a) General rule. – A qualified State tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified State tuition program. – For purposes of this section –

(1) In general. – The term "qualified State tuition program" means a program established and maintained by a State or agency or instrumentality thereof –

(A) under which a person –

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

(2) Cash contributions. – A program shall not be treated as a qualified State tuition program unless it provides that purchases or contributions may only be made in cash.

(3) Refunds. – A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not –

(A) used for qualified higher education expenses of the designated beneficiary,

(B) made on account of the death or disability of the designated beneficiary, or

(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.

(4) Separate accounting. – a program shall not be treated as a qualified State tuition program unless it provides separate accounting for each designated beneficiary.

(5) No investment direction. – A program shall not be treated as a qualified State tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).

(6) No pledging of interest as security. – A program shall not be treated as a qualified State tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(7) Prohibition on excess contributions. – A program shall not be treated as a qualified State tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors. –

(1) In general. – Except as otherwise provided in this subsection, no amount shall be includible in gross income of –

(A) a designated beneficiary under a qualified State tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary, with respect to any distribution or earnings under such program.

(2) Gift tax treatment of contributions. – For purposes of chapters 12 and 13 –

(A) In general. – Any contribution to a qualified tuition program on behalf of any designated beneficiary –

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of excess contributions. – If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) Distributions. –

(A) In general. – Any distribution under a qualified State tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) In-kind distributions. – Any benefit furnished to a designated beneficiary under a qualified State tuition program shall be treated as a distribution to the beneficiary.

(C) Change in beneficiaries. –

(i) Rollovers. – Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred to the credit of another designated beneficiary under a qualified State tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) Change in designated beneficiaries. – Any change in the designated beneficiary of an interest in a qualified State tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new

beneficiary is a member of the family of the old beneficiary.

(D) Operating rules. – For purposes of applying section 72 –

(i) to the extent provided by the Secretary, all qualified State tuition programs of which an individual is a designated beneficiary shall be treated as one program,

(ii) all distributions during a taxable year shall be treated as one distribution, and

(iii) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(4) Estate tax treatment. –

(A) In general. – No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) Amounts includible in estate of designated beneficiary in certain cases. – Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) Amounts includible in estate of donor making excess contributions. – In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such

contributions properly allocable to periods after the date of death of the donor.

(5) Other gift tax rules. – For purposes of chapters 12 and 13 –

(A) Treatment of distributions. – Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) Treatment of designation of new beneficiary. – The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).

(d) Reports. – Each officer or employee having control of the qualified State tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules. – For purposes of this section –

(1) Designated beneficiary. – The term "designated beneficairy" means –

(A) the individual designated at the commencement of participation in the qualified State tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified State tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family. – The term "member of the family" means, with respect to any designated beneficiary –

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in paragraphs (1) through (8) of section 152(a); and

(C) the spouse of any individual described in subparagraph (B).

(3) Qualified higher education expenses. –

(A) In general. – The term "qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.

(B) Room and board included for students who are at least half-time. –

(i) In general. – In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified State tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(7), a designated beneficiary shall be treated as meeting the requirements of this clause.

(ii) Limitation. – The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 108711, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.

(4) Application of section 514. – An interest in a qualified State tuition program shall not be treated as debt for purposes of section 514.

(5) Eligible educational institution. – The term 'eligible educational institution' means an institution –

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

(B) which is eligible to participate in a program under title IV of such Act.

CREDITS(S): 2001 Electronic Update

(Added Pub.L. 104-188, Title I, § 1806(a), Aug. 20, 1996, 110 Stat. 1895, and amended Pub.L. 105-34, Title II, § 211(a), (b), (d), (e)(2)(A), Title XVI, § 1601(b)(1)(a), (B), Aug. 5, 1997, 111 Stat. 810, 811, 812, 1092; Pub.L. 105- 206, Title VI, § 6004(c)(2), (3), July 22, 1998, 112 Stat. 793; Pub.L. 106- 554, § 1(a)(7) [Title III, § 319(5)]. Dec. 21, 2000, 114 Stat. 2763, 2763-___.)

UPDATING DOCUMENTS

1 Amended by *PL 107-16, June 7, 2001, 115 Stat 38.*

2. Amended by *PL 107-22, July 26, 2001, 115 Stat 196.*

PL 107-22 (S 1190)
July 26, 2001
COVERDELL EDUCATION SAVINGS ACCOUNTS

An Act To amend the Internal Revenue Code of 1986 to rename the education individual retirement accounts as the Coverdell education savings accounts.

PENDING LEGISLATION TO 26 U.S.C.A. § 529 QUALIFIED STATE TUITION PROGRAMS

1 *2001 CONG US S 1060,* 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide that certain postsecondary educational benefits provided by an employer to children of employees shall be excludable from gross income as part of an education (Jun 19, 2001), Introduced in Senate, Referenced.

2 *2001 CONG US S 1025,* 107th CONGRESS, 1st Session, To provide for savings for working families, (Jun 13, 2001), Introduced in Senate, Referenced.

3 *2001 CONG US HR 1990,* 107th CONGRESS, 1st Session, To leave no child behind. (May 26, 2001), Introduced in House, Technical or conforming amendment.

4 *2001 CONG US HR 1,* 107th CONGRESS, 1st Session (May 25, 2001), Placed on Calendar Senate, Referenced.

5 *2001 CONG US HR 1,* 107th CONGRESS, 1st Session, To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind. (May 23, 2001), Engrossed in House, Referenced.

6 *2001 CONG US S 940,* 107th CONGRESS, 1st Session, To leave no child behind. (May 23, 2001), Introduced in Senate, Technical or conforming amendment.

7 *2001 CONG US S 904,* 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for qualified professional development expenses of elementary and secondary school teachers and to allow a credit against income ta [sic] (May 16, 2001), Introduced in Senate, Referenced.

8 *2001 CONG US S 896*, 107th CONGRESS, 1st Session, To Provide for reconciliation pursuant to section 103 of the concurrent resolution on the budget for fiscal year 2002 (H. Con. Res. 83). (May 16, 2001), Placed on Calendar Senate, Amended.

9 *2001 CONG US S 763*, 107th CONGRESS, 1st Session, (Report No. 107-12) To amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum ann [sic] (Apr 24, 2001), Placed on Calendar Senate, Amended.

10 *2001 CONG US S 685*, 107th CONGRESS, 1st Session, To amend title IV of the Social Security Act to strengthen working families, and for other purposes. (Apr. 03, 2001), Introduced in Senate, Technical or conforming amendment.

11 *2001 CONG US HR 1308*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of co [sic] (Mar 29, 2001), Introduced in House, Amended.

12 *2001 CONG US S 420*, 107th CONGRESS, 1st Session, (Mar 15, 2001), Engrossed in Senate, Referenced.

13 *2001 CONG US HR 1018*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide for economic growth by providing tax relief. (Mar 14, 2001), Introduced in House, Amended.

14 *2001 CONG US S 458*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to make higher education more affordable, and for other purposes. (Mar 06, 2001), Introduced in Senate, Referenced.

15 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session (Mar 05, 2001), Placed on Calendar Senate, Referenced.

16 *2001 CONG US S 420*, 107th CONGRESS, 1st Session, To amend title 11, United States Code, and for other purposes. (Mar 01, 2001), Placed on Calendar Senate, Referenced.

17 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session, To amend title 11, United States Code, and for other purposes. (Mar 01, 2001), Engrossed in House, Referenced.

18 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session, (Report No. 107-3, Part I) To amend title 11, United States Code, and for other purposes. (Feb 26, 2001), Reported in House, Referenced.

19 *2001 CONG US S 335*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses, and for other purposes. (Feb 14, 2001), Introduced in Senate, Amended.

20 *2001 CONG US HR 636*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to permit private educational institutions to maintain qualified tuition programs which are comparable to qualified State tuition programs, and for other purposes. (Feb 14, 2001), Introduced in House, Amended.

21 *2001 CONG US HR 703*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide incentives to public elementary and secondary school teachers by providing a tax credit for teaching expenses, professional development expenses, and studen [sic] (Feb 14, 2001), Introduced in House, Referenced.

22 *2001 CONG US S 306*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to expand the use of education individual retirement accounts, and for other purposes. (Feb 13, 2001), Introduced in Senate, Referenced.

23 *2001 CONG US HR 538*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide tax incentives for education. (Feb 08, 2001), Introduced in House, Amended.

24 *2001 CONG US HR 549*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide additional tax incentives for education. (Feb 08, 2001), Introduced in House, Amended.

25 *2001 CONG US S 289*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide additional tax incentives for education. (Feb 08, 2001), Introduced in Senate, Amended.

26 *2001 CONG US HR 414*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to make the Hope and Lifetime Learning Credits refundable, and to allow taxpayers to obtain short-term student loans by using the future refund of such credits as coll [sic] (Feb 06, 2001), Introduced in House, Technical or conforming amendment.

27 *2001 CONG US HR 475*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid to any qualified State tuition program and to provide that distributions from such programs which are used to pay education exp [sic] (Feb 06, 2001), Introduced in House, Amended.

28 *2001 CONG US S 225*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide incentives to public elementary and secondary school teachers by providing a tax credit for teaching

expenses, professional development expenses, and student e [sic] (Jan 31, 2001), Introduced in Senate, Referenced.

29 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session, To amend title 11, United States Code, and for other purposes, (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or neg [sic] (Jan 31, 2001), Introduced in House, Referenced.

30 *2001 CONG US S 203*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for qualified professional development expenses of elementary and secondary school teachers and to allow a credit against income ta [sic] (Jan 30, 2001), Introduced in Senate, Referenced.

31 *2001 CONG US HR 248*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide that distributions from qualified State tuition programs which are used to pay educational expenses shall not be includable in gross income. (Jan 30, 2001), Introduced in House, Amended.

32 *2001 CONG US HR 249*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to permit private educational institutions to maintain qualified tuition programs and to provide that distributions from such programs which are used to pay educationa [sic] (Jan 30, 2001), Introduced in House, Amended.

33 *2001 CONG US S 9*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide tax relief, and for other purposes. (Jan 22, 2001), Introduced in Senate, Technical or conforming amendment.

34 *2001 CONG US S 35*, 107th CONGRESS, 1st Session, To provide relief to America's working families and to promote continued economic growth by returning a portion of the tax surplus to those who created it. (Jan 22, 2001), Introduced in Senate, Referenced.

35 *2001 CONG US S 8*, 107th CONGRESS, 1st Session, To improve the economic security of workers, and for other purposes. (Jan 22, 2001), Introduced in Senate, Technical or conforming amendment.

36 *2001 CONG US HR 102*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to encourage stronger math and science programs at elementary and secondary schools. (Jan 03, 2001), Introduced in House, Referenced.

37 *2001 CONG US HR 167*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to allow unused benefits from cafeteria plans to be carried over into later years and used for health care reimbursement rollover accounts and certain other plans, arr [sic] (Jan 03, 2001), Introduced in House, Exception created.

38 *2001 CONG US HR 84*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide tax incentives for education. (Jan 03, 2001), Introduced in House, Amended.

39 *2001 CONG US HR 86*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to restructure and replace the income tax system of the United States to meet national priorities, and for other purposes. (Jan 03, 2001), Introduced in House, Amended.

28 U.S.C.A. § 2403(a-b)

§ 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interests is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

42 USCA § 405

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 7 – SOCIAL SECURITY SUBCHAPTER II – FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS § 405. Evidence, procedure, and certification for payments

42 USCA § 405(c)(2)(C)(ii)

*** * * A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.**

* * *

42 USCA § 405

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 7 – SOCIAL SECURITY SUBCHAPTER II – FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS § 405. Evidence, procedure, and certification for payments

42 U.S.C. § 405(c)(2)(C)(viii)(I) ("Social Security account numbers and related records that are obtained or maintained by authorized personnel . . . shall be confidential, and no authorized person shall disclose any such social security account number or related record.")

APPENDIX G

FEDERAL RULES OF CIVIL PROCEDURE

FED R. Civ. Proc. 23

* * *

Fed.R.Civ.Proc. 23(c)(4)(A)

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

* * *

ADVISORY COMMITTEE NOTES

* * *

- Subdivision (c)(4). This provision recognizes that an action may be maintained as a class action as to particular issues only. For example, in a fraud or similar case the action may retain its "class" character only through the adjudication of liability to the class; the members of the class may thereafter be required to come in individually and prove the amounts of their respective claims.

BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF CIVIL PROCEDURE
TITLE III PLEADINGS AND MOTIONS

CIV R 7 PLEADINGS AND MOTIONS

* * *

(B) Motions

(1) An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing. A motion, whether written or oral, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

* * *

Aside

1. Use with Civ. R. 53 to defeat adequate and independent test re alleged procedural defect in raising disclosural rights claims.

Issues Class Action

[Civ. R. 23(C)(4)(a)]

Ohio Rules of Civil Procedure

CIV R 23 CLASS ACTIONS

(A) Prerequisites to a class action

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or face common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(B) Class actions maintainable

An action may be maintained as a class action if the prerequisites of subdivision (A) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action.

(C) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (B)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be

identified through reasonable effort. The notice shall advise each member that (a) the court will exclude him from the class if he so requests by a specified date; (b) the judgment, whether favorable or not, will include all members who do not request exclusion; and (c) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (B)(1) or (B)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (B)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (C)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (a) an action may be brought or maintained as a class action with respect to particular issues, or (b) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

* * *

APP R 30 DUTIES OF CLERKS

* *

(B) Custody of records and papers

The clerk shall have custody of the records and papers of the court. Papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and other filings.

BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF CIVIL PROCEDURE
TITLE VI TRIALS

CIV R 53 MAGISTRATES

(A) Appointment

**[Civ. R. 53(E)(4)(b) (App. 376)
Mandates reviewable order on objections]**

* * *

(C) Reference and Powers

(1) Order of reference

(a) A court of record may by order refer any of the following to a magistrate:

(i) any pretrial or post-judgment motion in any case;

(ii) the trial of any case that will not be tried to a jury; and

(iii) upon the unanimous written consent of the parties, the trial of any case that will be tried to a jury.

Except as provided in division (C)(1)(a)(iii) of this rule, the effect of a magistrate's order or decision is the same regardless of whether the parties have consented to the order of reference.

(b) Subject to division (C)(1)(a)(ii) and (iii) of this rule, an order of reference may be specific to a particular case or may refer categories of motions or cases.

(c) The order of reference to a magistrate may do all of the following:

(i) specify or limit the magistrate's powers;

(ii) direct the magistrate to report only upon particular issues, do or perform particular acts, or receive and report evidence only;

(iii) fix the time and place for beginning and closing the hearings and for the filing of the magistrate's decision.

(2) General powers

Subject to the specifications and limitations stated in the order or reference, the magistrate shall regulate all proceedings in very hearing as if by the court and do all acts and take all measures necessary or proper for the efficient performance of the magistrate's duties under the order. The magistrate may do all of the following:

* * *

(3) Power to enter orders

(a) Pretrial orders. Unless otherwise specified in the order of reference, the magistrate may enter orders without judicial approval in pretrial proceedings under Civ. R. 16, in discovery proceedings under Civ. R. 26 to 37, temporary restraining orders under Civ. R. 75(I), in hearings under Civ. R. 75(N), and other orders as necessary to regulate the proceedings.

(b) Appeal of pretrial orders. Any person may appeal to the court from any order of a magistrate entered under division (C)(3)(a) of this rule by filing a motion to set the order aside, stating the party's objections with particularity. The motion shall be filed no later than ten days after the magistrate's order is entered. The

pendency of a motion to set aside does not stay the effectiveness of the magistrate's order unless the magistrate or the court grants a stay.

* * *

(d) Other orders. Unless prohibited by the order of reference, a magistrate shall continue to be authorized to enter orders when authority is specifically conveyed by statute to magistrates.

(e) Form of magistrate's orders. All orders of a magistrate shall be in writing, signed by the magistrate, identified as a magistrate's order in the caption, filed with the clerk, and served on all parties or their attorneys.

(D) Proceedings

(1) All proceedings before the magistrate shall be in accordance with these rules and any applicable statutes, as if before the court.

(2) Except as otherwise provided by law, all proceedings before the magistrate shall be recorded in accordance with procedures established by the court.

(E) Decisions in referred matters

Unless specifically required by the order of reference, a magistrate is not required to prepare any report other than the magistrate's decision. Except as to those matters on which magistrates are permitted to enter orders without judicial approval pursuant to division (C)(3) of this rule, all matters referred to magistrates shall be decided as follows:

(1) Magistrate's decision

The magistrate promptly shall conduct all proceedings necessary for decision of referred matters. The magistrate shall prepare, sign, and file a magistrate's decision of the referred matter with the clerk, who shall serve copies on all the parties or their attorneys.

(2) Findings of fact and conclusions of law

If any party makes a request for findings of fact and conclusions of law under Civ. R. 52 or if findings and conclusions are otherwise required by law or by the order of reference, the magistrate's decision shall include findings of act and conclusions of law. If the request under Civ. R. 52 is made after the magistrate's decision is filed, the magistrate shall include the findings of fact and conclusions of law in an amended magistrate's decision.

(3) Objections

(a) Time for filing. Within fourteen days of the filing of a magistrate's decision, a party may file written objections to the magistrate's decision. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a request for findings of fact and conclusion of law under Civ. R. 52, the time for filing objections begins to run when the magistrate files a decision including findings of fact and conclusions of law.

(b) Form of objections. Objections shall be specific and state with particularity the grounds of objection. If the parties stipulate in writing that the magistrate's findings of fact shall be final, they may object only to errors of law in the magistrate's decision. Any objection to a

finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule.

(4) Court's action on magistrate's decision

(a) When effective. The magistrate's decision shall be effective when adopted by the court. The court may adopt the magistrate's decision if no written objections are filed unless it determines that there is an error or law or other defect on the face of the magistrate's decision.

(b) Dispositions of objections. The court shall rule on any objections. The court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter. The court may refuse to consider additional evidence proffered upon objections unless the objecting party demonstrates that with reasonable diligence the party could not have produced that evidence for the magistrate's consideration.

(c) Permanent and interim orders. The court may adopt a magistrate's decision and enter judgment without waiting for timely objections by the parties, but the filing of timely written objections shall operate as an automatic stay of execution of that judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered. The court may make an interim order on the basis of the magistrate's decision without waiting for or ruling on timely

objections by the parties where immediate relief is justified. An interim order shall not be subject to the automatic stay caused by the filing of timely objections. An interim order shall not extend more than twenty-eight days from the date of its entry unless, within that time and for good cause shown, the court extends the interim order for an additional twenty-eight days.

COMMENTARY

Staff Notes

1998:

* * *

Rule 53(E) Decisions in referred matters

The 1998 amendment was to division (E)(4)(b) of this rule. The amendment was made because some trial judges apparently had avoided ruling upon objections to magistrates' reports since the previous rule appeared to require only "consideration" of the objections. The amendment should clarify that the judge is to rule upon, not just consider, any objections.

* * *

1975:

As amended January 10, 1975, the subdivision was rewritten to provide that a party had five days from the filing of the referee's report within which to file objections to the report. In that amendment, the language employed was revised for the purposes of clearer expression. For example, **under the amendment, the objections are to be considered as a motion as opposed to the prior**

provision that the objections be by motion. The latter could be interpreted as requiring a motion separate from, but seeking action on, objections to the report.

When objections to a referee's report are considered as a motion, they are to be served and filed as a motion, thus the specific reference to Civ. R. 6(D) is unnecessary.

* * *

Aside:

1. Use Civ. R. 53(E)(4)(b) with Civ. R. 7 in event *Lang* presumption is not applied and *Johnson, Barr, Hathorn* adequacy test is applied. Please lag a determination of jurisdiction until review of the record, if necessary, since this already massive petition omits room to submit more detail. Deficiencies in pleadings are not to derail substantive matters, since this pro se clearly lacks knowledge. With petition printing costs already over a crippling $11,500.00+ Petitioner pleads for the courts' forgiveness for errors and omissions and relies on *M.L.B., Boddie, Mayer, Griffin,* for economic understanding.

APPENDIX H

OHIO STATUTES

R.C. § 149.43 (public records)

(A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following:

(a) Medical records;

* * *

(g) Trial preparation records;

* * *

(v) Records the release of which is prohibited by state or federal law.

* * *

(3) **"Medical record" means any document or combination of documents,** except births, deaths, and the fact of admission to or discharge from a hospital, **that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient** and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

* * *

(B)(1) Subject to division (B)(4) of this section, **all public records** shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

* * *

CREDIT(S)

(2000 S 180, eff. 3-22-01; 2000 H 448; eff. 10-5-00; 2000 H 640, eff. 9-14-00; 2000 H 539, eff. 6-21-00; 1999 H 471, eff. 7-1-00; 1999 S 78; eff. 12-16-99; 1999 S 55, eff. 10-26-99; 1998 H 421, eff. 5-6-98; 1997 H 352, eff. 1-1-98; * * *)

UNCODIFIED LAW

1999 S 78, § 3, eff. 12-16-99, reads:

Division (B) of section 149.43 of the Revised Code, as amended by this act, shall apply only to requests for the inspection or copying of public records or releases of information made on or after the effective date of that section.

OH ST § 2303.03
RC § 2303.03

2303.03 CLERK OF COURT OF COMMON PLEAS TO SERVE AS CLERK OF COURT OF APPEALS; * * *

(A) The clerk of the court of common pleas in each county also shall be clerk of the court of appeals of the county and, subject to division (B) of this section and while acting as the clerk of the court of appeals of the county and assuming the duties of that office, shall collect the same fees that the clerk otherwise collects and perform the same general duties that the clerk otherwise performs.

* * *

CREDIT(S): (1996 H 455, eff. 10-17-96; 1989 H 552, eff. 7-14-89; 1988 H 531; 1977 H 262; 1953 H 1; GC 2869)

UNCODIFIED LAW

1989 H 552, § 6, eff. 7-14-89, reads: The amendments made to sections 2303.03 and 2501.17 of the Revised Code by Section 1 of this act are intended as clarifications of the amount of additional compensation that is to be provided to the clerk of the court of common pleas in each county for acting as the clerk of the court of appeals in the county and assuming the duties of that office, as enacted in Am. H.B. 531 of the 117th General Assembly, and are not intended as substantive changes in law or as a grant of additional compensation that was not contemplated by the 117th General Assembly in its enactment of that act. The amendments to those sections made by

Section 1 of this act shall apply in determining the additional compensation to be provided to the clerk of the court of common pleas for each county for all time spent, on or after January 1, 1989, acting as the clerk of the court of appeals of the county and assuming the duties of that office.

OH ST § 2303.08
R.C. § 2303.08

2303.08 GENERAL DUTIES

The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk. The clerk may refuse to accept for filing any pleading or paper submitted for filing by a person who has been found to be a vexatious litigator under section 2323.52 of the Revised Code and who has failed to obtain leave to proceed under that section.

Aside:

1. Duties of clerk of courts do not seem to enable Internet release by statute, or App. R. 30.

OH ST § 2303.26
R.C. § 2303.26

2303.26 DUTIES OF CLERK

The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court.

OH ST § 2303.31
R.C. § 2303.31

2303.31 CLERKS OF OTHER COURTS

The duties prescribed by law for the clerk of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record.

[Compare Two Versions Of § 3103.03(B), With § 3119.86]

R.C. 3103.03 (Duty to Support)

(A) * * * The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding *section 3109.01 of the Revised Code* and to the extent provided in section 3319.86 of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

* * *

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1997 H 352, eff. 1-1-98; 1996 H 538, eff. 1-1-97; 1992 S 10, eff. 7-15-92; 1990 S 3, H 346; * * *)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2000 S 180 rewrote division (B) which prior thereto read:

"(B) Notwithstanding *section 3109.01 of the Revised Code*, the parental duty of support to children, including the

duty of a parent to pay support pursuant to a child support order, shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school or a court-issued child support order provides that the duty of support continues beyond the age of majority. Except in cases in which a child support order requires the duty of support to continue for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. That duty of support shall continue during seasonal vacation periods."

Amendment Note: 1997 H 352 inserted or a court-issued child support order provides that the duty of support continues beyond the age of majority" and added the second sentence in division (B); * * *

Aside:

1. See *Aside*, App. 393.
2. Even prior to Am. Sub. H.B. 352, duty of support extended past general age of majority R.C. § 3109.01 (App. 393) for STUDENTS STILL in high school; the bright line of 18 has long been dark.
3. One could argue age 19 was post, H.B. 352, "effective" age of majority, unless order extended such "effective" age further; surely this does not mean a child is cut-off from college support after his first year.

R.C. § 3105.011 Domestic Relations' Equity Powers & Jurisdiction

The court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. This section is not a determination by the general assembly that such equitable powers and jurisdiction do not exist with respect to any such matter.

Aside:

1. Court's powers and jurisdiction not statutorily tied to duration of parental responsibilities or duration of duty to support.
2. Consider jurisdiction with 28 U.S.C. § 1738B.

OH ST § 3105.10 (Enforcement of Separation Agreement Providing for Child Support.)

* * *

(B)(1) A separation agreement providing for the support of children eighteen years of age or older is enforceable by the court of common pleas.

(2) A separation agreement that was voluntarily entered into by the parties may be enforceable by the court of common pleas upon the motion of either party to the agreement, if the court determines that it would be in the interests of justice and equity to require enforcement of the separation agreement.

* * *

CREDIT(S): (1990 H 514, eff. 1-1-91; 1975 H 370; * * *)

Aside:

1. Use with 3105.65(B) (App. 392), enabling modification of previous agreements, which authority to modify is limited to parents who either *dissolve* a marriage, R.C. §§ 3105.61, 3105.63 (call for record to see many cases demonstrating equal protection violations), *or execute a Separation Agreement* which Agreement-based privileges were not accorded to parents similarly situated lacking the personal characteristic of ability to agree during parental litigation.
2. A Separation Agreement requires 100% Agreement on all matters (i.e., parenting time, property, support).
3. Parties in instant case reached agreement on parenting time and property.

R.C. 3105.21 (Court's Mandatory Duty to Order)

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or legal separation, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of *any dependent child* of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Any court of common pleas that makes or modifies an order for child support under this section shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1997 H 352, eff. 1-1-98; * * *)

HISTORICAL AND STATUTORY NOTES

* * *

Amendment Note: 2000 S 180 rewrote division (C) and deleted division (D). Prior to amendment and deletion divisions * * * (D) read:

* * *

"(D) Notwithstanding section 3109.01 of the Revised Code, if a court issues a child support order under this

section, the order shall remain in effect beyond the child's eighteenth birthday as long as the child continuously attends on a full-time basis any recognized and accredited high school **or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday**. Except in cases in which the order provides that the duty of support continues for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. Any parent ordered to pay support under a child support order issued under this section shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates."

Amendment Note: 1997 H 352 * * * inserted "or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday" and added the second sentence in division (D); * * *

* * *

Aside:

1. See *Aside,* App. 393.

R.C. 3105.65 (Continuing Modification Jurisdiction Over Agreements Has Long Enabled Later College Orders, to Issue)

(B) * * * The court has full power to enforce its decree and retains jurisdiction **to modify all matters pertaining to the allocation of parental rights and responsibilities** for the care of the children, to the designation [sic] a residential parent and legal custodian of the children, **to child support**, to parenting time of parents with the children, and to visitation for persons who are not the children's parents. The court, only in accordance with division (E)(2) of section 3105.18 of the revised Code, may modify the amount or terms of spousal support.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1990 S 3, eff. 4-11-91; 1990 H 514, S 25; 1986 H 358; 1975 H 370; 1974 H 233)

Aside:

1. Importantly, *not limited* to minority of children, (12/99 version).
2. Long empowering courts to make college orders (call for record), with explicit interpretation which empower post majority college support orders (12/99 version).
3. Power emasculated via 3/22/01 changes of courts here, and to R.C. 3119.86 et al. to try to thwart benefits to disadvantaged classes.
4. Must compare two versions of this since some was omitted here.

Aside:

R.C. 3109.01 (General Age of Majority)

All persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes.

CREDIT(S): (1973 S 1, eff. 1-1-74; 1953 H 1; GC 8005-1; Source – GC 8023)

[Compare with effective age of majority for support purposes; R.C. § 3109.05(E) (App. 400), repealed 3/22/01]

1. Duration of courts' authority to order not limited to minority 12/99 version.

2. Duration of parental duty to support, R.C. § 3103.03(B) (App. 386-387), 12/99 version amended 3/22/01.

3. Duration of courts' mandatory duty to order extends through dependency, R.C. § 3105.21(D) (App. 390-391); repealed 3/22/01. As further unconstitutionally displaced via R.C. §§ 3119.86, 3119.88 (App. 414-417), 3/22/01 version of 3103.03(B).

RC 3109.03 (Equality of Parental Responsibilities)

When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved.

CREDIT(S): (1990 S 3, eff. 4-11-91; 1953 H 1; GC 8005-3; Source – GC 8032)

Aside:

1. No limitation to "minor" children.
2. Second, parental responsibilities' statutes, § 3109.04, restricted to minor children (App. 395), with a third statute, which codified legislative findings, R.C. § 3109.401 (App. 403) as to parental responsibilities.

R.C. § 3109.04 (Parental Responsibilities for Minors)

(A) In any divorce, * * * and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, * * * and in accordance with *sections 3109.21* to *3109.36 of the Revised Code*, the court shall allocate the parental rights and responsibilities for the care of the *minor children* of the marriage.

* * *

(2) * * * The child support obligations of the parents under a shared parenting order issued under this division shall be determined in accordance with Chapters 3119., 3121., 3123., and 3125 [formerly section 3113.215] of the Revised Code.

(B)(1) When making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children.

* * *

(d) If a court approves a shared parenting plan under division (D)(1)(a)(i), (ii), or (iii) of this section, the approved plan shall be incorporated into a final shared parenting decree granting the parents the shared parenting of the children. Any final shared parenting decree shall be issued at the same time as and shall be appended to the final decree of dissolution, divorce, annulment, or legal separation arising out of the action out of which the question of the allocation of parental rights and responsibilities for the care of the children arose.

* * *

(E)(2)(b) The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. **Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.**

* * *

(F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

* * *

(d) The child's adjustment to the child's home, **school**, and community;

* * *

(F)(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in *section 3119.23 of the Revised Code*, and all of the following factors:

* * *

(G) * * * A plan for shared parenting shall include provisions covering all factors that are relevant to the care of the children, including but not limited to, provisions covering factors such as physical living arrangements, child support obligations, provision for the children's medical and dental care, **school placement**, and

* * *

(J) As used in the Revised Code, "shared parenting" means that the parents share, in the manner set forth in the plan for shared parenting that is approved by the court under division (D)(1) and described in division (K)(6) of this section, all or some of the aspects of physical and legal care of their children.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1994 H 415, eff. 11-9-94; 1993 S 115, eff. 10-12-93; 1990 S 3, H 514, H 591; * * *)

Amendment Note: 2000 S 180 substituted "Chapters 3119., 3121., 3123., and 3125.," for "section 3113.215" in division (A)(2); inserted "court-approved parenting time rights or" and deleted "approved by the court" after "companionship rights" in division (F)(1)(f); substituted "parent's" for "parent his or her" and "parenting time" for "visitation" in division (F)(1)(i); deleted "division (B)(3) of" after "enumerated" and substituted '3119.23" for "3113.215" in division (F)(2); * * *

Aside:

1. § 3109.04(A) uses phrase "minor children."
2. § 3109.04(G) requires school placement in plan.

R.C. § 3109.05 (Court's Powers in Authority to Render Judicial Determination of Emancipation Castrated, 3/22/01, via Deletion of R.C. 3109.05(E) ("or the order provides"))

(A)(1) In a divorce, dissolution of marriage, legal separation, or child support proceeding, the court may order either or both parents to support or help support their *children,* * * * . **In determining the amount reasonable or necessary for child support, including the medical needs of the child, the court shall comply with Chapter 3119. of the Revised Code.**

(2) The court, in accordance with Chapter 3119. of the Revised Code, shall include in each support order made under this section the requirement that **one or both of the parents provide for the health care needs of the child to the satisfaction of the court,** and the court shall include in the support order a requirement that all support payments be made through the office of child support in the department of job and family services.

(3) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.

* * *

(D) * * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1999 H 471, eff. 7-1-00; 1997 H 352, eff. 1-1-98; 1993 H 173, eff. 12-31-93; 1993 S 115; * * *)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2000 S 180 substituted "Chapter 3119" for "sections 3113.21 to 3113.219" in division (A)(1)

and (A)(2); rewrote division (A)(3); substituted "3123.17" for "3113.219"; rewrote division (D); **and deleted division (E)**. Prior to amendment or deletion divisions (A)(3), (D), and (E) read:

* * *

"(E) Notwithstanding **section 3109.01 of the Revised Code,** if a court issues a child support order under this section, the order shall remain in effect beyond the child's eighteenth birthday as long as the child continuously attends on a full-time basis any recognized and accredited high school **or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday. Except in cases in which the order provides that the duty of support continues for any period after the child reaches age nineteen,** the order shall not remain in effect after the child reaches age nineteen. Any parent ordered to pay support under a child support order issued under this section shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates."

* * *

Amendment Note: 1997 H 352 * * * **inserted "or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday" and added the second sentence in division (E);**

* * *

Amendment Note: 1993 S 115 rewrote division (A)(1), which previously read:

"(A)(1) In a divorce, dissolution of marriage, legal separation, or child support proceeding, the court may order

either or both parents to support or help support their children, without regard to marital misconduct. In determining the amount reasonable or **necessary for child support, including the medical needs of the child, the court shall comply with sections 3113.21 to 3113.219 of the Revised Code and shall consider all** relevant factors, including, but not limited to, all of the following:

"(a) The financial resources and the earning ability of the child;

"(b) The relative financial resources, other assets and resources, and needs of the residential parent and of the parent who is not the residential parent, when a decree for shared parenting is not issued;

"(c) The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued;

"(d) The physical and emotional condition and needs of the child;

"(c) The financial resources, other assets and resources, and needs of both parents, when a decree for shared parenting is issued;

"(f) The need and capacity of the child for an education, and the educational opportunities that would have been available to him had the circumstances requiring a court order for his support not arisen;

"(g) The earning ability of each parent;

"(h) The age of the child;

"(i) The responsibility of each parent for the support of others;

"(j) The value of services contributed by the residential parent."

Aside:

1. Not limited to minor children.

2. Pre 1993 factors list similar to that long employed by New Jersey to make college orders is widely followed, *Newburgh v. Arrigo*, 88 N.J. 529, 443 A.2d 1031 (N.J. 1982), as followed by many courts, i.e., see Alabama's Exparte Bayliss College Support Case (1989), for problems with such factor-methodology see North Dakota Supreme Court's *Donarski v. Donarski* college support decision (1998).

3 § 3109.05(E) (App. 400) (now repealed) is most important, construe with former 3013.03(B) (App. 386-387), 3119.05(F) (App. 407) (intact § 3113.215(B)(5)(f)), repealed § 3105.21(D) (App. 390-391). Effect of S.B. 180, 3/22/2001 is unconstitutional, and *more so* when effect on § 3105.65(B) (App. 392) and § 3105.10(B) (App. 389) is considered (entire class of parents and children stripped of college support privileges as case enters Eleventh Hour . . .).

R.C. 3109.401 (Legislative Findings)

(A) The general assembly finds the following:

(1) That the parent and child relationship is of fundamental importance to the welfare of a child, and that the **relationship between a child and each parent should be fostered unless inconsistent with the child's best interests;**

(2) That parents have the responsibility to make decisions and perform other parenting functions necessary for the care and growth of their children;

(3) That the courts, when allocating parenting functions and responsibilities with respect to the child in a divorce, dissolution of marriage, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities, must determine the child's best interests;

(4) That the courts and parents must take into consideration the following general principles when allocating parental rights and responsibilities and developing appropriate terms for parenting plans:

(a) Children are served by a parenting arrangement that best provides for a child's safety, emotional growth, health, stability, and physical care.

(b) Exposure of the child to harmful parental conflict should be minimized as much as possible.

(c) Whenever appropriate, parents should be encouraged to meet their responsibilities to their children through agreements rather than by relying on judicial intervention.

(d) When a parenting plan provides for mutual decision-making responsibility by the parents but they are unable to make decisions mutually, they should make a good faith effort to utilize the mediation process as required by the parenting plan.

* * *

(B) It is, therefore, the purpose of this chapter, when it is in the child's best interest, to foster the relationship between the child and each parent when a court allocates parental rights and responsibilities with respect to the child in a divorce, dissolution, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities.

* * *

CREDIT(S): (2000 H 548, eff. 3-22-01; 1999 H 471, eff. 7-1-00; 2000 S 245, eff. 3-30-00; 1998 H 770, eff. 6-17-98; 1998 S 112, eff. 9-1-98)

Aside:

1. Emancipation is to be a judicial determination as are all judicial findings. Petitioner testified multiple times before Ohio Senate Judiciary Committee on all matters.

R.C. 3113.215 (Orders To Be Made in Best Interests of Child)

[Repealed by S.B. 180, post decree, 3/22/01 – see O.R.C. 3119]

CREDIT(S): (2000 S 180, eff. 3-22-01; 2000 H 495, § 5, eff. 7-1-00; 2000 H 495, § 1, eff. 5-9-00; 1999 H 471, eff. 7-1-00; 1997 H 352, eff. 1-1-98; 1997 H 408, eff. 10-1-97; 1996 H 670, eff. 12-2-96; 1996 H 710, § 8, eff. 8-8-96; 1996 H 710, § 7, eff. 6-11-96; 1996 H 274, § 7, eff. 8-8-96; 1996 H 274, § 1, eff. 8-8-96; 1995 H 167, eff. 6-11-96; 1995 H 249, eff. 7-17-95; 1994 S 355, eff. 12-9-94; 1994 H 415, eff. 11-9-94; 1993 H 173, eff. 10-12-93; 1993 S 115; 1990 S 3, H 514, H 591)

Aside:

1. See App. 407-408.

R.C. 3119.01(C)(4) (Extraordinary Medical Expenses Definition Former R.C. 3113.215(A)(12) intact)

§ 3119.01 Definitions.

* * *

(C) As used in this chapter:

* * *

(4) "Extraordinary medical expenses" means any uninsured medical expenses incurred for a child during a calendar year that exceed one hundred dollars.

[Extraordinary Expense Order Standing, Former R.C. 3113.215(B)(5)(f) intact]

CHAPTER 3119. CHILD SUPPORT ORDERS CALCULATION OF SUPPORT OBLIGATION

§ 3119.05 REQUIREMENTS WHEN COURT COMPUTES CHILD SUPPORT

When a court computes the amount of child support required to be paid under a court child support order or a child support enforcement agency computes the amount of child support to be paid pursuant to an administrative child support order, all of the following apply:

* * *

(F) The court shall not order an amount of child support for reasonable and ordinary uninsured medical or dental expenses in addition to the amount of the child support obligation determined in accordance with the schedule. **The court shall issue a separate order for extraordinary medical or dental expenses, including, but not limited to, orthodontia, psychological, appropriate private education, and other expenses, and may consider the expenses in adjusting a child support order.**

* * *

basic child support obligation that is between those two amounts and corresponds proportionally to the parents' actual combined **gross income.**

(H) When the court or agency calculates **gross income,** the court or agency, when appropriate, may average income over a reasonable period of years.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01)

[Former 3113.215(B)(6)]

§ 3119.24 CHILD SUPPORT UNDER SHARED PARENTING ORDERS: EXTRAORDINARY CIRCUMSTANCES AND OTHER FACTORS FOR DEVIATION

(A)(1) A court that issues a shared parenting order in accordance with section 3109.04 of the Revised Code shall order an amount of child support to be paid under the child support order that is calculated in accordance with the schedule and with the worksheet set forth in section 3119.022 of the Revised Code, through the line establishing the actual annual obligation, except that, if that amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code, the court may deviate from that amount.

(2) The court shall consider extraordinary circumstances and other factors or criteria if it deviates from the amount described in division (A)(1) of this section and shall enter in the journal the amount described in division (A)(1) of this section its determination that the amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting its determination.

(B) For the purposes of this section, "extraordinary circumstances of the parents" includes all of the following:

* * *

(3) Each parent's expenses, including child care **expenses, school tuition,** medical expenses, dental

expenses, and any other expenses the court considers relevant;

(4) Any other circumstances the court considers relevant.

CREDIT(S): (2000 S 180, eff. 3-22-01)

[Substantially Revised § 3113.21(C)(1)(e)]

R.C. § 3119.82 DESIGNATION OF PARENT WHO MAY CLAIM CHILDREN AS DEPENDENTS FOR FEDERAL INCOME TAX PURPOSES

Whenever a court issues, or whenever it modifies, reviews, or otherwise reconsiders a court child support order, it shall designate which parent may claim the children who are the subject of the court child support order as dependents for federal income tax purposes as set forth in section 151 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. **If the parties agree on which parent should claim the children as dependents, the court shall designate that parent as the parent who may claim the children.** If the parties do not agree, the court, in its order, may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the court determines that this furthers the best interest of the children and, with respect to orders the court modifies, reviews, or reconsiders, the payments for child support are substantially current as ordered by the court for the year in which the children will be claimed as dependents. In cases in which the parties do not agree which parent may claim the children as dependents, the court shall consider, in making its determination, any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.

* * *

CREDIT(S): (2000 s 180, eff. 3-22-01)

But See Law During Proceedings:

R.C. § 3113.21(C)(1)(e)

* * *

(C)(1) In any action in which support is ordered under Chapter 3115. or under section 2151.23, 2151.231, 2151.232, 2151.33, 215.36, 2151.49, 3105.18, 3105.21, 3109.05, 3109.19, 3111.13, 3113.04, 3113.07, 3113.216, or 3113.31 of the Revised Code, all of the following apply:

* * *

(e) Whenever a court *modifies, reviews, or otherwise reconsiders a* child support order, it may *reconsider* which parent may claim the children who are the subject of the child support order as dependents for federal income tax purposes as set forth in section 151 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, and shall issue its determination on this issue as part of the child support order. The court in its order may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the payments for child support are current in full as ordered by the court for the year in which the children will be claimed as dependents.

* * *

[See 3105.171(F, I)]
(property)

CREDIT(S): (2000 S 180, eff. 3-22-01; 2000 H 535, eff. 4-1-01; 2000 H 509, eff. 9-21-00; 1999 H 471, eff. 7-1-00; 1999 H 222, eff. 11-2-99; 1998 S 170, eff. 3-30-99; 1997 H 352, eff. 1-1-98; * * *)

HISTORICAL AND STATUTORY NOTES

Publisher's Note: 3113.21 was amended by 2000 H 535, eff. 4-1-01, and repealed by 2000 S 180, eff. 3-22-01. The legal effect of these actions is in question. See Baldwin's Ohio Legislative Service Annotated, 2000, pages 11/L-2956 and 11/L-4178, or the OH-LEGIS or OH-LEGIS-OLD database on WESTLAW, for original versions of these Acts.

* * *

R.C. § 3105.171 Equitable division of marital and separate property,

* * *

(F) In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

* * *

(6) The tax consequences of the property division upon the respective awards to be made to each spouse;

* * *

(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;

* * *

(I) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.

* * *

[See 3113.21(C)(1)(e) repealed and displaced with 3119.82]

[Legislative Determination of Emancipation]

§ 3119.86 CIRCUMSTANCES REQUIRING DUTY OF SUPPORT BEYOND CHILD'S EIGHTEENTH BIRTHDAY

(A) Nothwithstanding section 3109.01 of the Revised Code, both of the following apply:

(1) The duty of support to a child imposed pursuant to a court child support order **shall continue beyond the child's eighteenth birthday only under the following circumstances:**

(a) The child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself.

(b) The **child's parents have agreed to continue support beyond the child's eighteenth birthday pursuant to a separation agreement** that was incorporated into a decree of divorce or dissolution.

(c) The child continuously attends a recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday.

(2) The duty of support to a child imposed pursuant to an administrative child support order shall continue beyond the child's eighteenth birthday only if the child continuously attends a recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday.

(B) A court child support order **shall not remain in effect after the child reaches nineteen years of age unless the order provides that the duty of support continues under circumstances described** in division

(A)(1)(a) or (b) of this section for any period after the child reaches age nineteen. An administrative child support order shall not remain in effect after the child reaches age nineteen.

(C) If a court incorporates a separation agreement described in division (A)(1)(b) of this section into a decree of divorce or dissolution, **the court may not require the duty of support to continue beyond the date the child's parents have agreed support should terminate.**

(D) A parent ordered to pay support under a child support order shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates.

CREDIT(S): (2000 S 180, eff. 3-22-01)

Compare with Version from S.B. 180, passed by Ohio Senate May 24, 2000

DURATION OF SUPPORT CONSOLIDATED (3109.05(E); 3105.21(D) WITH 3103.03(B) (left intact))

Sec. 3119.86. (A) NOTHWITHSTANDING SECTION 3109.01 OF THE REVISED CODE, BOTH OF THE FOLLOWING APPLY:

(1) A COURT CHILD SUPPORT ORDER SHALL REMAIN IN EFFECT BEYOND THE CHILD'S EIGHTEENTH BIRTHDAY AS LONG AS THE CHILD CONTINUOUSLY ATTENDS ON A FULL-TIME BASIS A RECOGNIZED AND ACCREDITED HIGH SCHOOL OR THE ORDER PROVIDES THAT THE DUTY OF SUPPORT OF THE CHILD CONTINUES BEYOND THE CHILD'S EIGHTEENTH BIRTHDAY, BUT THE ORDER SHALL NOT REMAIN IN EFFECT AFTER THE CHILD REACHES NINETEEN YEARS OF AGE UNLESS THE ORDER PROVIDES THAT THE DUTY OF SUPPORT CONTINUES FOR ANY PERIOD AFTER THE CHILD REACHES NINETEEN YEARS OF AGE;

* * *

(B) A PARENT ORDERED TO PAY SUPPORT UNDER A CHILD SUPPORT ORDER SHALL CONTINUE TO PAY SUPPORT UNDER THE ORDER, INCLUDING DURING SEASONAL VACATION PERIODS, UNTIL THE ORDER TERMINATES.

Aside:

1. Not in effect at date of decree, 12/30/1999.
2. Impact of S.B. 180 unconstitutional.
3. Ohio law is fuzzy on which version of statutes apply when support matters come back before courts (see SCO-00-2254 motion for stay submitted to Supreme Court of Ohio, in which Petitioner extensively briefed retroactivity).

LEGISLATIVE FINDINGS

[Compromised Former 3113.21(G)(4)(a) et al.]

§ 3119.88 REASONS FOR TERMINATION OF CHILD SUPPORT ORDER

Reasons for which a child support order should terminate include all of the following:

(A) The child's attainment of the age of majority if the child no longer attends an accredited high school on a full-time basis and **the child support order requires support to continue past the age of majority only if** the child continuously attends such a high school after attaining that age;

(B) The child ceasing to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;

(C) The child's death;

(D) The child's marriage;

(E) The child's emancipation;

(F) The child's enlistment in the armed services;

(G) The child's deportation;

(H) Change of legal custody of the child.

CREDIT(S): (2000 S 180, eff. 3-22-01)

Extract of T.d. 23

(75M ORDER, in effect 1994-1999)

Dec. 14, 1994, IMAGE 53-58

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes Plaintiff [ ] Obligor [ ] Obligee	Enter /s/ Ernest Karen CHIEF REFEREE
270-52-9846 7/21/56 SS# DOB	Date 12/12/94
-vs.-	Case No. A/DR-5802798
	Filed No. E-194749-0-
Samuel Todd Defendant [ ] Obligor [ ] Obligee	CSEA AAs _____
293-56-1656 10/4/54 SS# DOB	Judge Dinkelacker
	ORDER ALLOCATING PARENTING RIGHTS AND SUPPORT, PENDENTE, LITE, (75M)

[ENTERED DEC 14, 1994]

For good cause shown, as prescribed by Civil Rule 75(M), the Court orders:

1. **D'Ellen Bardes is designated the residential parent and legal custodian of the minor child(ren) Samuel & Garrison** subject to the following visitation: [ ] Standard Order [X] Other: standard order attached or modified Neither party shall remove the child(ren) from the jurisdiction without the express written consent of the other, or court order.

2. Husband shall pay to Wife as child support the sum of $539.10 per month per child, total $1078.20 per month. Husband shall pay to Wife as spousal support the sum of $275.00 per month. All payments must include 2% poundage and must be paid through the Child Support Enforcement Agency (CSEA) located at 800 Broadway. Cincinnati, Ohio 45202. Direct payments will be considered gifts. The order is payable bi-weekly (pay schedule) in a total amount of $637.05, which includes the 2% poundage. The obligor must make payments directly to the CSEA, until the deduction order becomes effective.

3. Household expenses/personal expenses/debts shall be paid as follows: each to pay their own expenses. Unless otherwise ordered each party shall pay all household expenses for his or her own resident.

4. **Husband shall obtain/maintain health insurance coverage for the parties' minor child(ren). Wife is designated to receive insurance reimbursements.** Party carrying health care coverage for the benefit of the other party shall continue such coverage until further order. If health care coverage was in effect at the time the complaint herein was filed and has been terminated by one party without the consent of the other, such insurance shall be reinstated immediately.

5. The basis of this order is [X] Affidavit [ ] Worksheet [ ] Other: _____

6. Additional documents/orders as necessary are attached hereto and incorporated herein for all purposes including [X] Support Worksheet: [X] Standard Visitations Order: [X] 3113.21 Order: [X] Health Care Order: [ ] Mediation Entry: [ ] Investigation Entry: [ ] Other:

_____

7. Additional Orders: _____

_____

Upon written request within 28 days of journalization of this order, the Court shall grant the requesting party an oral hearing on this order. A Request for Oral Hearing shall not suspend or delay the commencement of any provision of this order.

All child support and spousal support ordered by this order shall be withheld or deducted from the wages or checks of the obligor under the order in accordance with Section 3113.21 of the Revised Code and shall be forwarded to the obligee under the order in accordance with Section 3113.21 to 3113.21+ of the Revised Code. The specific withholding or deduction requirements or other appropriate requirements to be used to collect the support mail be set forth in and determined by reference to the notices that are rendered by the court or Child Support Enforcement Agency (CSEA) in accordance with Divisions (A)(2) and (D) of Section 3113.21 of the Revised Code or those court orders that are issued and sent out in accordance with Divisions (D)(6), (D)(7), or (H) of Section 3113.21 of the Revised Code, and shall be determined evidence the need for any mentioned to the support order. Those notices and court orders, plus the ___ provided by the court or agency that require the person who is required to pay support to notify the Child Support Enforcement Agency (CSEA) of any change in their employment scenes or of any other change in the means of their assets, are fiscal and are enforceable by the court.

This order is effective December 12, 1994.

/s/ William L. Murphy 12/13/94
Referee

* * *

[Worksheets & visitation order deleted]

Extract of T.d. 203

(Temporary Extraordinary Expenses Order)
Sept. 14, 1998, IMAGE 108-110
[Allocates Extraordinary Expenses 75%, 25%]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Name D'Ellen Bardes
SS# 270-52-9846
DOB

Plaintiff/Petitioner

-vs-

Name
Samuel Pogue Todd III
SS# 293-58-1656
DOB 01/04/54

Defendant/Petitioner
Obligor

Penelope R. Cunningham
JUDGE
Issue Date 09/14/98
Case No. DR9402798
File No. E194749
CSEA No. AA89964/01
JUDGE
Penelope R. Cunningham
MAGISTRATE
William Murphy

QUALIFIED MEDICAL CHILD SUPPORT ORDER

(O.R.C. 3113.217)

[ENTERED SEP. 14, 1998]

HEALTH INSURANCE PLAN:		AETNA US HEALTHCARE
PARTICIPANT: Obligor	Name:	Samuel Pogue Todd III
	Address:	670 Reiseling Knoll Cincinnati OH 45226-0000
PARTICIPANT EMPLOYER		Ross Sinclair & Assoc Inc
	Address:	Ross Sinclair & Assoc Inc 36 E 7th St Ste 1550 Cincinnati OH 45202-0000
ALTERNATE RECIPIENT(S): (Children)	Name(s): and DOB	Samuel Todd – 02/19/90; Garrison Todd – 09/20/91
	Address:	Samuel Todd – 1035 Paxton Ave – , 45208-0000 Garrison Todd – 1035 Paxton Ave – , 45208-0000

WHEREAS, the Court finds that health insurance coverage for the child(ren) referred as Alternate Recipient(s) to available to the Participant at a reasonable cost and that the Participant has been ordered to secure/maintain health insurance coverage for the child(ren).

IT IS HEREBY ORDERED THAT:

* * *

4. Obligee shall be responsible for the first $100.00 per calendar year, per child for all uninsured medical, dental, hospital, prescription, optical, psychological, psychiatric and orthodontic expenses, including co-payments to 1 deductible (designated "ordinary"). **The remaining uninsured expenses (designated "extraordinary"), including additional co-payments and/or deductibles** under the Health Insurance Plan for the Alternate Recipient(s), shall

be shared by the parties as follows: Obligor – 75% and Obligee – 25% or other agreement or order: _____

5. Any reimbursements for out-of-pocket medical, optical, hospital, dental, prescription or other reimbursable expenses covered under the Health Insurance Plan or any successor plan and paid for on behalf of the Alternate Recipient(s) insured child(ren) shall be made directly to:

Name: D'Ellen Bardes

Address: 1035 Paxton Ave
45208-0000

The insurer may continue to make payments for medical, optical, hospital, dental or prescription services directly to any health care provider in accordance with the Health Insurance Plan.

* * *

14. It is the intention of the parties that this Order continue to qualify as a Qualified Medical Child Support Order under ERISA Section 609, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to reconfirm the qualified status of the Order as benefits become payable hereunder.

15. This Order shall not be construed so as to require the Health Insurance Plan to provide any type or form of benefit, or any option, which otherwise would not be provided to a dependent under the Plan.

16. This Order shall remain in effect until the earliest of: (a) the date that Participant loses his/her employer-sponsored health coverage as a result of his/her termination of employment, retirement, or death or (b) the date that the Alternate Recipient reaches the age of eighteen (18)

years and no longer attends any recognized and accredited high school on a full-time basis; or (c) the date that the employer no longer offers dependent health care coverage to any of its employees under the Health Insurance Plan or any successor plan.

[ENTERED SEP. 14, 1998]

HAVE SEEN AND APPROVED:

Plaintiff/Petitioner/ Obligor/Obligee	Defendant/Petitioner/ Obligor/Obligee
Attorney for Plaintiff/ Petitioner	Attorney for Defendant/ Petitioner
Accepted by Plan Committee or Administrator	Date

* * *

[ENTERED SEP. 14, 1998]

[See permanent order, App. 57-66, T.d. 342 QMCSO, Standing Order of Allocation of Extraordinary Medical Expenses (App. 407)]

[Notice of Appeal Shows Clerk's Website for DR 02798 Active as of 1/27/00]
Jan. 27, 2000

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Plaintiff/Appellant

vs.

SAMUEL POGUE TODD III

Defendant/Appellee

C#000055
TRIAL CT. NO. DR9402798
Trial Ct. File: E 194749-0-7

- ***Lower court docket at Hamilton Cty Clerk of Courts web site (1994-2000):*** **http://www.courtclerk.org/aps/ttl/lns/smcpb021.asp?DR9402798**
- ***Partial full text documents available at*** **http://www.courtclerk.org/document.htm** **(*must then type in case # DR9402798*)**

Judge Penelope Cunningham
Magistrate William Murphy

NOTICE OF APPEAL

(Filed Jan. 27, 2000)

Now comes the Plaintiff/Appellant, Dee Ellen Garrison Bardes, pro se, and hereby gives notice of appeal in the Court of Appeals, First Appellate District of Ohio, Hamilton County, from a) final appealable orders and entries entered by said trial court on the 30th day of December, 1999; b) one earlier final appealable order issued 4/30/1999, re: ***denial of class Action status,*** now being appealed pursuant to App. R. 4(B)(5); c) a post decree entry issued on 1/26/2000 denying inter alia relief from judgment, and again ***denying direct certification of conflicts to Supreme Court of Ohio*** (See earlier motion to certify filed 10/27/98); d) other decisions and orders; e) various of the court's findings of fact made throughout the proceedings, and findings adopted; f) lack of findings, lack of orders rendered sufficient to provide a remedy to Plaintiff/Appellant.

* * *

Document Inquiry

Jim Cissell • Clerk of Courts Hamilton County, Ohio

Available documents for case: DR9402798

Get the Document	Date Filed	Document Type	Pages
DOCUMENT	2/3/00	Service Return	1
DOCUMENT	1/27/00	Filing	2
DOCUMENT	1/27/00	Filing	2
DOCUMENT	1/27/00	Filing	1
DOCUMENT	1/27/00	Filing	8
DOCUMENT	1/26/00	Entry	3
DOCUMENT	1/26/00	Filing	2
DOCUMENT	1/26/00	Filing	1
DOCUMENT	1/26/00	Filing	5
DOCUMENT	1/26/00	Filing	1
DOCUMENT	1/26/00	Filing	3
DOCUMENT	1/24/00	Motion	101
DOCUMENT	1/24/00	Transcript	1
DOCUMENT	12/30/99	Decree	43
DOCUMENT	12/30/99	Entry	1
DOCUMENT	12/30/99	Decree	30
DOCUMENT	12/20/99	Motion	8
DOCUMENT	12/10/99	Filing	52
DOCUMENT	12/7/99	Filing	38
DOCUMENT	12/2/99	Other	1
DOCUMENT	12/2/99	Entry	1
DOCUMENT	12/2/99	Entry	1
DOCUMENT	12/1/99	Motion	5
DOCUMENT	11/29/99	Entry	2
DOCUMENT	11/27/99	Filing	106
DOCUMENT	11/17/99	Entry	1
DOCUMENT	11/12/99	Filing	2
DOCUMENT	11/12/99	Filing	3
DOCUMENT	11/10/99	Motion	81
DOCUMENT	11/3/99	Motion	35
DOCUMENT	11/1/99	Entry	1

BEST AVAILABLE COPY

DOCUMENT	10/5/99	Filing	3
DOCUMENT	9/30/99	Filing	5
DOCUMENT	9/29/99	Filing	25
DOCUMENT	9/23/99	Motion	33
DOCUMENT	9/22/99	Entry	1
DOCUMENT	9/22/99	Entry	1
DOCUMENT	9/21/99	Motion	2
DOCUMENT	9/16/99	Filing	22
DOCUMENT	9/3/99	Entry	1
DOCUMENT	9/2/99	Entry	11
DOCUMENT	9/1/99	Entry	2
DOCUMENT	9/1/99	Entry	4
DOCUMENT	9/1/99	Entry	1
DOCUMENT	9/1/99	Entry	6
DOCUMENT	8/26/99	Entry	1
DOCUMENT	8/23/99	Filing	3
DOCUMENT	8/20/99	Filing	4
DOCUMENT	8/19/99	Entry	2
DOCUMENT	8/17/99	Motion	55
DOCUMENT	8/9/99	Filing	33
DOCUMENT	8/6/99	Motion	81
DOCUMENT	8/3/99	Filing	6
DOCUMENT	8/2/99	Filing	3
DOCUMENT	7/28/99	Entry	1
DOCUMENT	7/26/99	Motion	16
DOCUMENT	7/26/99	Motion	4
DOCUMENT	7/26/99	Motion	4
DOCUMENT	7/26/99	Motion	3
DOCUMENT	7/26/99	Motion	17
DOCUMENT	7/24/99	Motion	13
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	4/30/99	Entry	1
DOCUMENT	4/30/99	Entry	1
DOCUMENT	4/30/99	Entry	1
DOCUMENT	3/26/99	Entry	1
DOCUMENT	10/27/98	Other	31
DOCUMENT	2/13/98	Transcript	1

BOARD OF EDUCATION, CITY SCHOOL DISTRICT OF THE CITY OF CINCINNATI
OFFICE OF THE TREASURER
P O. BOX 5384, Cincinnati, Ohio 45201-5384
Phone (513) 475-7170, Fax (513) 475-4483

August, 2001

Dear Parent or Guardian:

The Student Fees form on ~~the reverse side of~~ this letter needs to be completed and returned to the school for each student.

Student fees are used to pay part of the cost of essential classroom materials that are very important for your child's successful performance in school. The fee schedule for the 2001-2002 school year reflects no increase over the prior school year and is shown on the back of this letter. As in past years, the fees are based in part on family income and the number of children you have in the Cincinnati Public Schools. We are striving to hold costs down without sacrificing quality services to our students.

Ohio House Bill 117 prohibits Cincinnati Public Schools from charging these fees to a student who receives Ohio Works First (OWF) or Disability Assistance (DA). If your student is eligible for a waiver for these student fees because of receiving Ohio Works First (OWF) or Disability Assistance (DA), you must indicate this in Section 3 ~~on the reverse side~~ and submit to the school an eligibility form completed and signed by your Hamilton County Department of Human Services caseworker. (~~See attached sample.~~ You must contact your caseworker to receive this form.)

Student fees are one-time charges for the entire 2001-2002 school year. You can help your child get off to a good start this year by completing the form ~~on the reverse side of this letter~~ as early as possible and returning it to your child's school. To qualify for an adjustment, payment must be made in the current school year. Fees for previous years will be charged at the full amount.

If you have questions, please call your child's school. Thank you for your cooperation in the early payment of student fees.

Sincerely,

Michael J. Geoghegan
Treasurer/CFO

MJG/as

SCHEDULE OF STUDENT FEES - PER CHILD

	NUMBER OF CHILDREN IN CINCINNATI PUBLIC SCHOOLS	FAMILY INCOME RANGE		
		$25,000/Yr. And Over (OVER $480/wk)	$8,500 - $24,999/Yr. ($165 - $480/wk)	$8,499/Yr. And Under (UNDER $165/wk)
		AMOUNT TO BE PAID PER CHILD PER YEAR		
1/2 Day KDG	1	13.00	9.00	4.00
All Day KDG		26.00	18.00	9.00
1 - 6		26.00	18.00	9.00
7 - 8		31.00	21.00	10.00
9 - 12		35.00	23.00	12.00
1/2 Day KDG	2	12.00	8.00	4.00
All Day KDG		23.00	16.00	8.00
1 - 6		23.00	16.00	8.00
7 - 8		29.00	20.00	10.00
9 - 12		33.00	22.00	11.00
1/2 Day KDG	3 or more	10.00	7.00	3.00
All Day KDG		18.00	12.00	7.00
1 - 6		18.00	12.00	7.00
7 - 8		23.00	16.00	8.00
9 - 12		25.00	17.00	9.00

NOTE - PARENT/GUARDIAN: - Please complete a separate form for each child and return with payment to the school your child attends.

FEES ARE DUE ANNUALLY. OBLIGATIONS WILL BE ISSUED AT THE HIGHEST SCHEDULED RATE IF FEES ARE NOT PAID BY JUNE 30 OF THE CURRENT SCHOOL YEAR.

Please pay with cash or money order
***** NO PERSONAL CHECKS WILL BE ACCEPTED *****

✂ ..... *Cut off and return to school by October 19, 2001* .....

1. Student's Name _____ Homeroom _____

School Attending _____ Amount Enclosed _____

Parent/Geardian's Signature _____ Date _____

SECTION 1	SECTION 2		
(✓) Number of Children in Family Attending Cincinnati Public Schools	(✓) FAMILY INCOME RANGE		
	$25,000/Yr. And Over	$8,500 - $24,999/Yr.	$8,499/Yr. And Under
___ 1 ___ 2 ___ 3 or more	___ (OVER $480/wk)	___ ($165 - $480/wk)	___ (UNDER $165/wk)

SECTION 3

We receive Ohio Works First (OWF) or Disability Assistance (DA). yes no
If yes, you must contact your Hamilton County Department of Human Resources caseworker to obtain an eligibility form to submit to your school.

List Names and Schools for no more than 3 additional children attending Cincinnati Public Schools

	Student Name	School Attending
2.		
3.		
4.		

[LOGO]
GEORGE V. VOINOVICH
GOVERNOR

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43266-0601

September 9, 1997

Ms. Dee Bardes
1035 Paxton Ave.
Cincinnati, OH 45208

Dear Ms. Bardes:

Thank you for your recent correspondence regarding House Bill 352, which was passed by the General Assembly and I signed into law on August 28, 1997. Some of the provisions of this bill include the creation of a centralized collection and disbursement system for all child support cases and putting new paternity establishment procedures into place.

Enclosed please find a copy of the press release that was issued, which will provide you with further information regarding this important measure. Please feel free to contact my office in the future with any other matters relevant to state government. Thank you for your interest in this important piece of legislation.

Sincerely,

/s/ George V. Voinovich
George V. Voinovich
Governor

GVV/dp

[Address Omitted in Printing]

[LOGO]
Ohio TUITION TRUST AUTHORITY

the smart start for college

1-800-AFFORD-IT
233-6734

September 4, 1998

Dee Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208-2828

RE: Contract Number 810432
Contract Number 810424

Dear Ms. Bardes:

From our conversation a few weeks ago I have been able to obtain the information you requested. That and more is listed below:

- The Ohio Prepaid Tuition Program is administered by the Ohio Tuition Trust Authority (OTTA), which is a state agency that was created by the Ohio General Assembly and the programs of which are governed by Ohio Revised Code Chapter 3334. The legislation passed in 1989.

- OTTA sells tuition units which are guaranteed to keep pace with the tuition inflation at Ohio public four-year universities. However, tuition units may be used at any accredited school in the country.

- OTTA is backed by the full faith and credit of the state of Ohio, which is the highest level of backing the state provides. That makes this program one of the safest savings vehicles you can choose.

- The program is a state tax exempt, which means you will not pay state tax as long as prepaid tuition is used for college tuition and expense.
- The program is federal tax deferred, which means when the program is used for college tuition and expenses, federal taxes are deferred. At the time your beneficiary reaches college and begins the matriculation or payout phase of the contract, he/she will be responsible for paying the federal income tax on the value over and above the original purchase price.

  NOTE: OTTA continually works with the College Saving Plan Network (currently made up of 43 states) to received better federal tax treatment for our participants.
- There are other possible tax advantages, but you will need to contact a legal tax consultant for additional information, as each family financial status is different.
- A beneficiary may have more than one account. Each account will be treated individually.
- Annual account statements are sent each year at the end of the state's fiscal year.
- Due to recent legislation tuition units can now be used to pay for room and board. Room and board expenses are defined as those which meet the minimum guidelines set by the institution to calculate the cost of attendance for federal financial aid programs. Typically this includes a standard double-occupancy room with a 19 meal food plan. Of course this will vary slightly depending on the college or university your child attends.

You also inquired about this program being made part of any divorce settlements in the past. The answer is yes. But due to confidentiality I will not be able to release any

specific information; however, this program has been used around the state in divorce settlements. Judges and attorneys have inquired about this program and have drawn it up in settlements. Most required that both parents purchase a specific number of units for their child or children.

You specifically inquired about Kenyon College. Below are the number of units it has taken since 1996 to attend per year.

1995-96	$20,890	528 Units
1996-97	$22,010	524 Units
1997-98	$22,850	531 Units
1998-99	$27,780*	645 Units

*Verbal confirmation from school.

I hope this information helps. If you have any additional questions or need additional help, please let me know.

Sincerely,

/s/ Susan Sloan
Susan L. Sloan
Director of Operations
Ohio Tuition Trust Authority

[SEAL]

Attorney General
Betty D. Montgomery

September 18, 1998

Ms. Dee Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208-2828

Dear Ms. Bardes:

This letter is in response to our telephone conversation yesterday concerning your request for certain information from the Ohio Tuition Trust Authority ("OTTA"). It is my understanding from our conversation that you are seeking to identify those OTTA account holders who are participating in the Prepaid Tuition Plan under the direction of a divorce decree or divorce order. You indicated that such information would be helpful in your attempt to convince courts that Ohio's Prepaid Tuition Plan is a viable option when imposing an order of child support.

As I attempted to explain during our conversation, OTTA does not maintain any account information related to divorce decrees or divorce orders. Information concerning the identify of a purchaser or a beneficiary of tuition or units is deemed confidential. In fact, all records of the Authority indicating the identity of purchasers or beneficiaries of tuition credits the number of tuition credits purchased, used, or refunded under a tuition payment contract are not public records within the meaning of the Ohio's Public Records Act (Ohio Revised Code Section 149.43).

In spite of my efforts to explain to you that the Authority does not maintain the information you requested, you nonetheless mentioned that you would consider taking legal actions to secure aforementioned information. While I can appreciate your determination, I strongly suggest that, with the knowledge that the Authority does not keep records related to whether any account may be court ordered, you submit any further request to the Authority in writing with a detailed explanation of the exact manner in which OTTA might assist you. The Authority has on occasion provided courts with general information about the Ohio Prepaid Tuition Program and if asked, would be pleased to do the same for you. If you have further questions about this matter, please do not hesitate to contact me.

Sincerely,

Betty D. Montgomery
Attorney General

/s/ Theodore Adams
Theodore Adams
Assistant Attorney General
Assistant Chief, Education Section

cc: Barbara Jennings, Executive Director,
Ohio Tuition Trust Authority
Jan Neiger, Assistant Attorney General,
Public Affairs Section

[Address omitted in Printing]

January 13, 1999

[LOGO]
Ohio **TUITION TRUST AUTHORITY**
the smart start for college

1-800-AFFORD-IT
233-6734

Dee Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208-2828

RE: Court Action using Ohio Tuition Trust Authority

Dear Ms. Bardes,

Enclosed is a copy of a Court Order that instructs a Defendant to enroll two children in the Ohio Tuition Trust Authority's Prepaid College Program.

Before notifying you of this court order, I contacted the Defendant and requested permission to provide you with this information. The Defendant did give verbal authorization to release this information.

If I can be of further service to you, please let me know.

Sincerely,

/s/ Susan Sloan
Susan L. Sloan
Ohio Tuition Trust Authority
Director of Operations

enclosure

IN THE COURT OF COMMON PLEAS
FAMILY COURT DIVISION
STARK COUNTY, OHIO

~~[illegible]~~

Plaintiff

vs

~~[illegible]~~

Defendant

CASE NO. DR89-0871
JUDGE EDWARDS
JUDGMENT ENTRY
(Agreed Entry)

(Filed Feb. 16, 1995)

The court being duly advised in the premises that the parties in the within action have reached an agreement as to the issues raised in Plaintiff's Motion filed January 24, 1995 and as to all issues regarding the support and educations of their children, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. ~~[illegible]~~

2. The Defendant ~~[illegible]~~ shall enroll in The Prepaid Tuition Program of The Ohio Tuition Trust Authority, P. O. Box 691078, Cincinnati, Ohio 45269-1078 and shall purchase college tuition units for each of the minor children as follows:

On behalf of ~~[illegible]~~ (D.O.B. 2/16/79) -

100 units on or before August 1, 1995
100 units on or before August 1, 1996
100 units on or before August 1, 1997
100 units on or before August 1, 1998

On behalf of ~~[illegible]~~ (D.O.B. 2/15/83) -

100 units on or before August 1, 1999
100 units on or before August 1, 2000

100 units on or before August 1, 2001
100 units on or before August 1, 2002

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[illegible] N. Main Street – P. O. Box [illegible]
[Illegible], Ohio 44663

THE HANNAH REPORT

Vol. 122, No. 111
Wednesday, June 11, 1997

Ohio's Legislative and Governmental Information Source

* * *

SENATE JUDICIARY

Wednesday, June 11, 1997, 10:00 a.m.,
North HR
Sen. Louis Blessing
Donna Russell 466-8068

SB112 (SCHAFRATH R) To make changes in the child custody laws – Ohio Parenting Act.

Opponent testimony was presented by Dee Bardes, Junior League of Cincinnati. She said the bill will reduce the already "nomimal" dollars paid to mothers based on nights the child sleeps in the father's home. It will encourage fathers to have their children sleep over more just to reduce child support payments, she suggested. A mother would have a financial disincentive to have the children stay with the father and would be less likely to encourage the children to stay with him. Bardes said the bill eliminates the court discretion to award sole custody and it overlaps with the Ohio Family Feasibility Study. She asked the committee to support a statute governing post-majority support for educational expenses.

PROCEDURAL DEFECT INADEQUATE TO DERAIL FEDERAL JURISDICTION OVER DISCLOSURAL RIGHTS

1) **App. 150, #7, T.d. 314, Decisions & Orders, trial court decided and overruled P's objections re: error by Court in dismissing issues of state and federal constitutional claims raised by Plaintiff in her Closing Argument, T.d. 193 (with 5 appendices binders also docketed as T.d. 193); Court further declined to affirm P's assertion with regard to her constitutional claims;**

2) **App. 157,** #2, Order deleting SSNs and D.O.Bs from T.d. 283 [**App. 170**] caption [but order facially not reflecting deletion]. [redaction ordered without motion];

3) **App. 144,** #5, Holding admitted Civ. R. 53 requirement that "once objections are filed, the Court must then consider and rule on the objections." [reviewable order required to issue by law];

4) T.p. 167, 10/21/1997, p. 14, line 6-p. 16, line 12 (raised orally in front of Magistrate in hearing) (dismissed by him as horse already left the barn-suggested that Mother talk to Clerk);

5) T.d. 193, 3/18/1998, Part I: Plaintiff's Closing Argument [*Written extension of Trial*], p. 75-76, #PP, ("PP. This Court's Failure to make an order to seal our detailed and extensive domestic relations file (now multiple boxes, including medical records) from public view will violate our family's constitutionally protected rights to privacy and will jeopardize our rights to ensure our family's financial and personal safety, and further causes need to redefine the definition of a "public record" given the automating of Ohio's domestic relations files and the widespread

accessibility to all divorcing persons initimate financial and medical records via the Internet and dial up access.");

6) T.d. 202, Sec. IV, #Q, p. 72, 9/10/1998 "PLAINTIFF'S OBJECTIONS WITH PRESERVATION OF CONSTITUTIONAL VIOLATIONS, TO MAGISTRATE'S 8/27/1998 DECISION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW", objecting to (T.d. 201, 8/27/1998, Magistrate's Decision With Findings of Fact And Conclusions of Law) ("Q. THE TRIAL COURT COMMITTED ERROR OF LAW PREJUDICIAL TO MOTHER AND THE CHILDREN BY FAILING TO MAKE CONCLUSIONS OF LAW REGARDING THE SEALING OF THE PARTIES COURT RECORD DUE TO THE PARTIES' RIGHTS TO PRIVACY, THE CONTENTS OF THE RECORD, AND THE INCREASING AUTOMATION OF THE COURTS' RECORDS."; In the same Objections filing, at (T.d. 201, page 10), Mother claimed: ("**THE TRIAL COURT ERRS IN DISMISSING ISSUES OF STATE AND FEDERAL (FIRST AMENDMENT, FIFTH AMENDMENT, NINTH AMENDMENT, AND FOURTEENTH AMENDMENT) CONSTITUTIONAL CLAIMS AS RAISED IN MOTHER'S CLOSING ARGUMENT AND THROUGHOUT THE RECORD, BY NOT MAKING FINDINGS AND CONCLUSIONS RELATED TO SUCH CLAIMS.**") *See Constitutional arguments, and attached appendices.* This reference cited to the comprehensive appendices tracing constitutional violations with full text, leading cases, various claims, albeit docketed late, and cited below (T.d. 345-347). At (T.d. 345, p. 1/65), #H of the Table of Contents lists "**Right to Privacy, N.E.C. [not elsewhere classified] & Fourth Amendment** 39 [commencing on page # 39]". On p. 39, §4.1 states " * * * " [full text of 4th Amndmt.]. The top of page 40, immediately following such citation,

the paragraph states: (*"Claims: include, right of privacy, due process, freedom from abuse of court system, right to meaningful remedy; Failure to Seal Domestic Relations records with financial and medical information; et al"*) [other constitutional bases for disclosural rights, First Amendment, 14th Amendment (privileges, equal protection, due process), Article IV, privileges, et al. with landmark cases];

7) T.d. 212, 10/8/1998, P's Motion and Affidavit for declaratory Judgment re: Updated Civ. R. 53, and T.d. 213, 10/23/98 P's Notice of Hearing on P's 10/8/98 Motion & Affidavit for Declaratory Judgment re: Updated Civ. R. 53 (<Transcript at T.p. 216?, 11/3/98, check if reissued, as listed on Civ. Docket statement in First District>);

8) **App. 160-164**, Decision (T.d. 312, 9/1/1999, p. 2-5) includes Aug. 18, 1999 letter from Mr. Timothy Meyer, Assistant Chief Deputy, Hamilton County Clerk of Courts [*See Burns v. Ohio*, 360 U.S. 252, 254-257 (1959)] [*clerk's letter an order of court representing policy of state*];

9) T.p. 349, 1/24/2000, p. ___, nine pages from end (judge asserting problem of scanning and releasing personal information is out of courts hands –);

10) T.d. 338, 12/10/99, in Plaintiff's Proposed Judgment Entry Decree of Divorce and Parenting Decree, filed 12/10/1999, p. 2, #2; On p. 4 of the Judgment Entry Decree of Shared Parenting (in same filing).